

(22,401)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 167.

ROSCOE LYLE, APPELLANT,

vs.

GEORGE W. PATTERSON, T. H. SMITH, W. M. SMITH,
ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.

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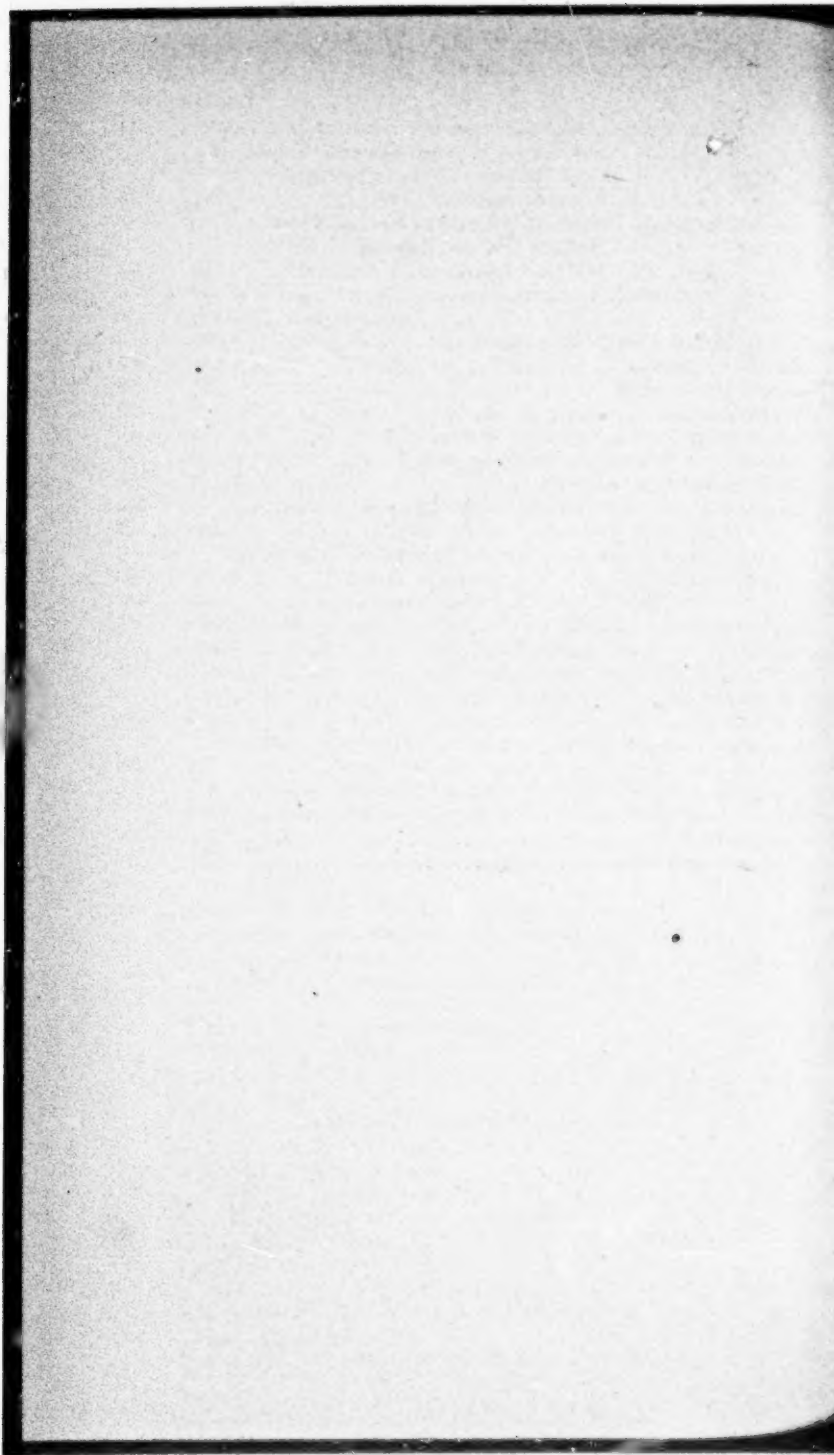
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a Pleas and Proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1909, of said Court, Before the Honorable Walter H. Sanborn, Circuit Judge, and the Honorable John A. Riner and the Honorable William H. Munger, District Judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to-wit: on the twenty-eighth day of January, A. D. 1909, a transcript of record pursuant to an appeal allowed by the Circuit Court of the United States for the Northern District of Iowa was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein Roscoe Lyle was Appellant and George M. Patterson, T. H. Smith, W. M. Smith, and Thomas Beacom; L. Hoffman, Intervener, were Appellees, which said transcript as printed pursuant to the stipulation of the parties for use of the Court upon the hearing of said cause is in the words and figures following, to-wit:

1 In the United States Circuit Court of Appeals in and for the Eighth Circuit.

#210.

ROSCOE LYLE, Appellant,

v.

GEO. M. PATTERSON, T. H. SMITH, W. M. SMITH, & THOMAS BEACOM; L. HOFFMAN, Intervenor, Appellees.

Stipulation.

At the request of Appellant, it is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective attorneys of record, that in printing the transcript of record on appeal, the map need not be printed, but may be omitted from the printed record, with the understanding and agreement that, upon the trial and submission of the cause, reference thereto, and use thereof, as though printed, may be made to the original transcript.

Dated at Sioux City, Iowa, March 23rd, 1909.

M. B. DAVIS,
Attorney for Appellant.

W. D. BOIES,
*Attorney for Appellees, Geo. M. Patterson, T. H. Smith,
W. M. Smith, and Thomas Beacom.*

(Endorsed:) No. 2996. Roscoe Lyle, Appellant, vs. George M. Patterson et al. Stipulation to omit map from the printed records, etc. Filed Mar. 30, 1909, John D. Jordan, Clerk.

THE UNITED STATES OF AMERICA,
Northern District of Iowa, ss:

Pleas Before the Circuit Court of the United States in and for the Northern District of Iowa, Western Division, at a Term Begun and Holden at Sioux City, in said District, on the 2nd Tuesday of October, A. D. 1907, Before the Hon. Henry T. Reed, Judge of the Northern District of Iowa.

No. 210. Equity.

ROSCOE LYLE, Plaintiff,

vs.

GEORGE W. PATTERSON, T. H. SMITH, W. M. SMITH, and THOMAS BEACOM, Defendants.

Be It Remembered, That heretofore to-wit on the 24th day of May, A. D. 1901, a Bill of Complaint was filed in the foregoing entitled cause, in the office of the Clerk of the Circuit Court of the United States in and for the Northern District of Iowa, Western Division, in the words and figures following, to-wit:

2 In the Circuit Court of the United States, Northern District of Iowa, Western Division.

No. 210. In Equity.

ROSCOE LYLE, Plaintiff,

vs.

GEORGE M. PATTERSON, T. H. SMITH, W. M. SMITH, and THOMAS BEACOM, Defendants.

To the Honorable United States Circuit Court, holding in equity, the plaintiff states as follows:

First. That he is a citizen of the United States over the age of twenty one years, residing in the county of O'Brien and State of Iowa, and has a homestead right under the laws of the United States and brings this suit in his own right.

Second. The defendants are citizens of the United States; that defendant George W. Patterson resides in the State of Minnesota, and plaintiff is informed and believes his post office address is Worthington of that State, that said Patterson is the original patentee of the land hereinafter described, and which is the subject of this suit.

That defendant T. H. Smith plaintiff is informed and believes resides in O'Brien County, State of Iowa, and that said defendant T. H. Smith, took conveyance of the land in dispute, plaintiff alleges

and believes, with actual knowledge and full notice of the defects of the title to said land, and plaintiff alleges further that if said Smith did not actually and personally know of said defects, that he would be and was obliged to and did take notice of said defects by reason of the public laws and statutes effecting said land and by which said title would be defective, and under which the plaintiff would be entitled to the relief herein demanded, and also that said defendant should and did take notice of the acts of the Iowa Legislature and the officers of said State relative to the adjustment, forfeiture, and resumption of said land, and of the open and notorious facts of the failure of said railroad company, to comply with the provisions of the Granting Act of May 12, 1864, and the failure of the Company to complete said road, and of the fact that said Road had already received more land than they were entitled to, and that by reason of the lapse of time in which to complete said road, and by reason of the laws of the United States and the State of Iowa, said Company could not earn and could not be entitled to receive said land, and take notice that the contract of the purchase made from said Company was contrary to law, and that the patent herein questioned was issued without authority of law, and was void.

3 Plaintiff further alleges that defendants W. M. Smith and Thomas Beacom, that he (said plaintiff) is informed and believes reside in O'Brien County, State of Iowa, and that said defendants took conveyance of the land in dispute, plaintiff alleges and believes, with actual knowledge and full notice of the defects of the title to said land, and further alleges that if said defendants W. M. Smith and Thomas Beacom did not actually and personally know of said defects, that they would be and were obliged to and did take notice of said defects by reason of the public laws and statutes effecting said land, and by which said title would be defective and under which the plaintiff would be entitled to the relief herein demanded, and also that said defendants should and did take notice of the acts of the Iowa Legislature and the officers of said State relative to the adjustment, forfeiture, and resumption of said land and of the open and notorious facts of the failure of said railroad company to comply with the provisions of the Granting Act of May 12, 1864, and the failure of the Company to complete said road, and of the fact that said Road had already received more land than they were entitled to, and that by reason of the lapse of time in which to complete said road, and by reason of the laws of the United States and the State of Iowa, said Company could not earn and could not be entitled to receive said land, and take notice that the contract of the purchase made from said Company was contract to law, and that the patent herein questioned was issued without authority of law and was void.

Third. The legal question herein presented and under which the plaintiff claims his right involves the construction of the United States statutes, especially of the land granting Act of May 12, 1864, granting certain lands to the State of Iowa to secure the building of the railroad from Sioux City to the Minnesota state line and the

disposal, resumption, adjustment, and forfeiture of said land under said grant, and by authority conferred in said grant; and also the construction of the disposal of said land to homesteaders under the public land laws of the United States and also the right of disposal of said lands by the United States under the Act of March 3, 1887, to purchasers claiming to have purchased from the Sioux City and St. Paul Railway Company, and now claiming the same as against the plaintiff by reason of the fourth section of the Act of March 3rd, 1887, and the questions arising by virtue of all of the above enumerated statutes and laws of the United States, and others incident thereto.

The value of the property herein claimed by the plaintiff is Eight Thousand dollars (\$8,000.00).

- 4 That the said Thomas Beacom now holds the conveyance of said land under said patent to the land aforesaid.

The plaintiff represents to the Court as follows:

That by the Act of Congress approved May 12, 1864, the following grant of land was made to the State of Iowa, in alternate sections:

An Act for a Grant of Lands to the State of Iowa in Alternate Sections to Aid in the Construction of a Railroad in said State.

Be it enacted in the Senate and House of Representatives of the United States of America in Congress assembled: That there be, and is hereby, granted to the State of Iowa, for the purpose of aiding in the construction of a railroad from Sioux City in said State, to the south line of the State of Minnesota, as such points as the said state of Iowa may select, between the Big Sioux and the West Fork of the Des Moines River; also to said State for the use and benefit of the McGregor Western Railroad Company, for the purpose of aiding in the construction, of a railroad from a point at or near the foot of Main Street South McGregor, in said State, in a westerly direction, by the most practicable route, on or near the forty third parallel of North Latitude until it shall intercept the said road running from Sioux City to the Minnesota State Lane, in the County of O'Brien, in said State, every alternate section of land designated by odd numbers for ten sections, in width on each side of said road; but, in case it shall appear that the United States have, when the lines or routes of said roads are definitely located, sold any section or part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid, from the public lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the right of homestead settlement, or pre-emption has attached, as aforesaid, which lands thus indicated by odd numbers and sections, by the

direction of the Secretary of the Interior, shall be held by the State of Iowa for the uses and purposes aforesaid: Provided, That the lands so selected shall in no case be located more than 20 miles from the lines of said roads: Provided further, That any and all lands heretofore reserved to the United States by an act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvements or other purpose whatever, be, and the same are hereby, reserved and excepted from the operation of this act, except so far as it may be found necessary to locate routes of said roads through such reserved lands, in which case the right of way shall be granted, subject to the approval of the President of the United States.

SEC. 2. And be it further enacted, That the sections and parts of sections of land which by such grant shall remain to the United States within ten miles on each side of said roads shall not be sold for less than double the minimum price of public lands when sold; nor shall any of said lands become subject to sale at private entry until the same shall have been first offered at public sale to the highest bidder at or above the minimum price as aforesaid, Provided, That actual bona fide settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the increased minimum price; And provided also, That settlers under the provisions of the homestead law; who comply with the terms and requirements of said act, shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding.

SEC. 3. And be it further enacted, That the lands hereby granted shall be subject to the disposal of the legislature of Iowa; for the purposes aforesaid and no other. And the said railroads shall be, and remain, public highways, for the use of the government of the United States, free of all toll or other charges, upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted, That the lands hereby granted shall be subject to the disposal of the legislature of Iowa, for the purpose aforesaid, and no other. And the said railroads shall be, and remain, public highways for the use of the Government of the United States.*

SEC. 4. And be it further enacted, that the lands hereby granted shall be disposed of by said State for the purposes aforesaid only, and in manner following, namely; When the governor of said State shall certify to the Secretary of the Interior, that any section of ten consecutive miles of either of said roads is completed in a good, workmanlike, substantial manner, as a firstclass railroad, then the Secretary of the Interior shall issue to the State, patents for one hundred sections of land for the benefit of the road having completed the ten miles as aforesaid. When the Governor of said State shall certify that another section of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said State in like manner for a like number, and when certificates of the completion of additional sec-

tions of ten consecutive miles of either of said roads are, from time to time made as aforesaid, additional sections of lands shall be patented as aforesaid, until said roads, or either of them are completed, when the whole of the lands hereby granted shall be patented to the State for the uses aforesaid and none other; Provided, That if the said McGregor Western Railroad Company, or assigns, shall fail to complete at least 20 miles of its said road during each and every — from the date of its acceptance of the grant provided for in this act, then the State may resume said grant and so dispose of the same as to secure the completion of a road on said line and upon such terms, within such time as the State shall determine; Provided Further; That if the said roads are not completed within ten years from their several acceptance of this grant the said lands hereby granted and not patented shall revert to the State of Iowa for the purposes of securing the completion of the said roads within such time, not to exceed five years, and upon such terms as the State shall determine: And Provided Further, That said lands shall not in any manner be disposed of or incumbered except as the same are patented under the provisions of this Act: And should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States.

SEC. 5. And be it further enacted, That as soon as the Governor of said State of Iowa shall file or cause to be filed with the Secretary of the Interior maps designating the routes of said roads, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of this act.

SEC. 6. And be it further enacted, That there be, and is hereby granted to the State of Minnesota, for the purpose of aiding in the construction of a railroad from St. Paul and St. Anthony via Minneapolis, to a convenient point of junction west of the Mississippi, to the southern boundary of the State, in the direction of the Mouth of the Big Sioux River, four additional alternate sections of land per mile, to be selected upon the same conditional restrictions and limitations, as are contained in the act of Congress entitled "An

7 Act making a grant of land to the Territories of Minnesota, in alternate sections to aid in the construction of certain railroads in said territory; and granting public lands, in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State": approved March 3, eighteen hundred and fifty seven; Provided, That the land to be so located by virtue of this section may be selected within twenty miles of the line of said road, but in no case at a greater distance therefrom.

Approved May 12, 1864.

Fourth. That on the third day of April 1866, the State of Iowa duly accepted said grant, and on the same day conferred that portion made in aid of the construction of the said road from Sioux City to the south line of the State of Minnesota, upon the Sioux City & St. Paul Railroad Company, a corporation duly organized and existing under and by virtue of the laws of said State, said grant

to said railroad company being made upon the terms, conditions, and restrictions contained in the aforesaid act of Congress.

Fifth. That said Railroad Company accepted said grant and entered upon the construction of said road and completed five sections of ten miles each of said road from the Minnesota State line southward and received from the State of Iowa the amount of land the company was entitled to by reason of said construction under said grant.

Sixth. That in his second bi-ennial Message to the Iowa Legislature, in January 1882, the Governor of the State of Iowa called the attention of the legislature thereof to the failure of said Railroad Company to complete said road in accordance with the terms of the grant and informed the Legislature of his refusal to convey any more lands to the Railroad Company because it had already received all the land it had earned, recommending action to be taken by the Legislature thereon in the following language;

"On May 12, 1864, Congress granted to this State certain lands to aid in the construction of a railroad from Sioux City to the south line of the State of Minnesota at such point as the State should select between the "Big Sioux" and the "west fork of the Des Moines River." This grant was designed to aid in constructing a line from Sioux City to St. Paul, and was a virtual continuation of a branch line of the Union Pacific Railroad, contemplated by the act for the construction of that road passed in 1862, and to be built from Sioux City to some point on that railroad east of the one hundredth meridian.

8 By Chapter 144 of the Acts of the General Assembly (Eleventh) which took effect May 20, 1866, this State accepted the grant which was by the same general assembly conferred on the Sioux City & St. Paul Railroad Company. This company built its road from the southern line of Minnesota, in the direction of the Sioux City, as far as Le Mars, at which point it intersects the Iowa Falls and Sioux City Railroad, now operated by the Illinois Central Railroad Company, on which road the former company has trackage into Sioux City. Thus far the road was built in 1872, since which time the lands along the contemplated line for fifty miles have been certified to the company, aggregating three hundred and twenty two thousand acres or a little more than the amount to which the company was entitled under the Act of Congress. In 1878 the Company requested me to certify to it the remainder of the lands, amounting to between eighty five thousand and ninety thousand acres. This I declined to do, on the ground that the Company had not complied with the terms of the grant, which provided for a line from Sioux City to the South line of the State of Minnesota. Had the road been completed to Sioux City the lands would have been certified but I cannot be persuaded that a road terminating at Le Mars can be fairly construed to have been built to Sioux City, even if the Railway Company has trackage to that place over another line, much less from Sioux City.

The Act of May 1864, required the construction of the road within ten years after the acceptance of the grant by the State, after which

the State had five years further to complete the work. By not completing the line to Sioux City within the time prescribed, it will be seen that the Sioux City & St. Paul Railroad Company, has forfeited all its rights to the uncertified portions of the grant. It therefore becomes the duty of the General Assembly to take such steps as may be deemed advisable for the purpose of securing the completion of the road contemplated in the act of Congress. The original intent of the act was to make Sioux City a point on a great national highway between the Union Pacific and the Great Lakes and to give the people along the line contemplated the benefit of the facilities thus to be afforded. The General Assembly should see to it that to the best of its ability, the lands yet within the control of the public shall be utilized in order to secure the completion of the line for which they were intended."

Seventh. That the 19th General Assembly of the State of Iowa in pursuance thereof enacted the following law, declaring the forfeiture of the lands granted and fully resuming the same, to-wit;

9

Chapter 107.

An Act to Resume all the Lands and Rights Conferred upon the Sioux City and St. Paul Railroad Company by or under an Act of Congress Approved May 12, A. D. 1874, to Lands not Heretofore Earned by said Company.

Whereas, By an Act of Congress approved May 12, 1864, entitled "An Act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State." Certain lands were granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City in said state to the south line of Minnesota, at such point as the State might select, between the Big Sioux and the West Fork of the Des Moines River, which grant was made to, and accepted by the State of Iowa upon the conditions, restrictions, and qualifications therein named, and,

Whereas, By an act of the General Assembly of the State of Iowa Approved April 3, 1866, so much of the lands, interests, rights, powers and privileges as were or might be conferred in pursuance of said act of Congress, to aid in the construction of the aforesaid road, were disposed of, granted, and conferred upon the Sioux City & St. Paul Railroad Company; and Whereas, Said Sioux City & St. Paul Company duly accepted said grant on the 20th day of September, A. D. 1866, but has failed to complete or cause to be completed any road on the line adopted therefor, from Sioux City to Le Mars, in said State of Iowa, or any road in lieu thereof;

Be It Enacted by the General Assembly of the State of Iowa;

SEC. 1. That all lands, and all rights to lands granted or intended to be granted to the Sioux City & St. Paul Railroad Company by said acts of Congress and of the General Assembly of the State of Iowa, which have not been earned by said railroad company by a compli-

ance with the conditions of said grant be, and the same are hereby absolutely and entirely resumed by the State of Iowa, and that the same be and are absolutely vested in said State, as if the same had never been granted to said railroad company.

SEC. 2. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and the Sioux City Journal, newspapers published in the State of Iowa;

Approved March 16, 1882.

10 Eighth. That on the 27th day of March 1884, the legislature of the State of Iowa relinquished to the United States all their right and title to said lands by an act duly passed and approved; Said act was as follows;

Chapter 71.

An Act to relinquish and re-convey to the United States all the lands and rights to lands granted to the State of Iowa by the Act of Congress entitled, "An Act for a grant of land to the State of Iowa in alternate sections to aid in the construction of a railroad in the State of Iowa," approved May 12, A. D. 1864, which have not been earned pursuant to the provisions of said Act.

Whereas, By an act of Congress, approved May 12, 1864, entitled "An Act for a grant of land to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," certain lands were granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City in said State to the south line of Minnesota, at such point as the State might select, between the Big Sioux and the West Fork of the Des Moines River, which grant was made to and accepted by the State of Iowa, upon the conditions restrictions and qualifications therein named; and,

Whereas, By Acts of the General Assembly of the State of Iowa approved April 3rd, 1866, and April 20th, A. D. 1866, the lands, rights, powers, duties, and trusts conferred upon the State of Iowa by said Acts of Congress were duly accepted on the part of the State of Iowa; and,

Whereas, By an Act of the General Assembly of the State of Iowa approved April 3d, A. D. 1866 so much of the lands, interests rights, powers and privileges, as were or might be conferred upon the Sioux City & St. Paul Railroad Company; and,

Whereas, By an act of the General Assembly of the State of Iowa approved March 16, A. D. 1882, all lands and all rights to lands granted or intended to be granted to the Sioux City and St. Paul Railroad Company, by said acts of Congress and of the General Assembly of the State of Iowa, which had not been earned by said railroad company by a compliance with the conditions of said grant, were absolutely and entirely resumed by the State of Iowa, and vested in said State as absolutely as though the same had never been granted to said railroad company, and,

Whereas, It is desirable that all lands and rights to lands resumed by the State of Iowa as aforesaid, should be conveyed to and vested in the United States, to the end that such lands shall be made
 11 subject to the use of actual settlers, as provided by the Acts of Congress relating thereto, now, therefore,

Be it enacted, by the General Assembly of the State of Iowa:

Sec. 1. That all lands and all rights to lands resumed and intended to be resumed by chapter one hundred and seven (107) of the acts of the Nineteenth General Assembly of the State of Iowa, are hereby relinquished and conveyed to the United States.

Sec. 2. That the Governor of the State of Iowa is hereby authorized and directed to certify to the Secretary of the Interior all the lands which have been heretofore patented to the State to aid in the construction of said railroad and which have not been patented by the State to the Sioux City & St. Paul Railroad Company and the list of lands so certified by the Governor shall be presumed to be the lands relinquished and conveyed by section one of this act, provided that nothing in this section contained shall be construed to apply to lands situated in counties of Dickinson and O'Brien.

Sec. 3. This act being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register, a newspaper published at Des Moines, Iowa, and the Sioux City Journal a newspaper published at Sioux City, Approved March 27, 1884.

Took effect by publication April 2nd, 1884.

Ninth. That at the time of the passage of the aforesaid act of 1882, there remained of the grant to the State of Iowa, and not yet earned and not yet conveyed to the railroad company by the State of Iowa, the following, among other lands, to-wit; Southwest quarter section Three (3) Township ninety seven (97) range forty two (42).

Tenth. That the amount of lands granted and patented to the State of Iowa to secure the building of a railroad from Sioux City, Iowa, to the Minnesota State line and granted conditionally, to the Sioux City & St. Paul Railroad by the State, and which was withheld from conveyance to the said railroad company by the State by reason of the Company's failure to build said road any further than from the Minnesota State line to Le Mars Iowa, and by reason of the failure of the Company to comply with the provisions of the granting act of 1864,—and held by the State under the original grant and never certified or patented to the Company, and so withheld by the State at the time of the passage of the act of forfeiture and resumption hereinbefore set out,—was 85,457.40 acres; a full
 12 and complete list, by numbers of said land so withheld and resumed, and so forfeited being published by the Secretary of the State of Iowa in 1883, to be found on pages 94, 95, 96, and 97 of the printed report of the Secretary of the State of Iowa for the year 1883.

Those lands were the lands that the Sioux City & St. Paul Ry. Co., had demanded a conveyance of from the State and that the

Governor refused to convey and referred to in his Message of 1882, and which were so withheld in 1882 at the time of the passage of the resumption act and act of forfeiture by the Iowa Legislature, and were the lands referred to in said act. This list of lands, then, and now in the office of the Secretary of the State of Iowa, was all the balance of the entire grant made for the purpose of securing the building of the railroad, granted by the General Government to the State and the patenting to the said railroad company by the State of all lands earned by it for the building of all the road it did build, and earned by it for the building of all the road it did build, and the refusal to patent any more, and the action of the Governor and Executive officers, and of the Legislature of said State in making and publishing the list of lands remaining unearned and unpatented to the Company and still held by the State, was a full and complete adjustment of said land grant, and made by the State of Iowa through its proper and legally constituted authorities, as authorized in the granting act to the State, and said grant then was and has since 1882 remained fully and completely adjusted, so far as the Sioux City & St. Paul Ry. Company is concerned, or any one claiming under them, or by virtue of the act of March 3, 1887. And plaintiff alleges and calls especially attention of the Court to the fact that the authority conferred in the granting act of May 12, 1864, granting land to the State of Iowa to secure the building of a railroad from Sioux City to the Minnesota State line, also conferring upon the State of Iowa, through the legislature thereof, not only the power and authority to bestow the land upon any railroad company it might select, but also authorized and empowered the State of Iowa through its legislature in terms, clearly stated the right, authority and power of adjustment, forfeiture, and resumption in case of non compliance, together with the right after having resumed to secure the completion of the road by the use of said lands, either by itself, or to another company, and in this, the granting act aforesaid is unlike any other granting act to any other State ever passed by Congress. Plaintiff alleges that the State of Iowa, having this authority of adjustment, forfeiture, and resumption, as to these lands herein described, exercised it fully and completely, and

13 in 1884 relinquished all of said lands to which the Sioux City & St. Paul Ry. Co., would have had any right to the United States.

Eleventh. The lands set out in the aforementioned list are located in the counties of Dickinson, Plymouth, Woodbury, Sioux [an-] O'Brien. The total of the various descriptions aggregating in all 85,457.40 acres, and being distributed in said Counties as follows:

In Dickinson County, The SE. qr., NW. and W. $\frac{1}{2}$ NW. qr., Sec. 7 Tp. 98, R. 33, 113.10 acres, and nine other descriptions all — Dickinson County, Iowa, aggregating in all 4,142.86 acres.

In Plymouth county, Sec. 5, Tp. 93, R. 47, and thirty other descriptions, aggregating in all 11,780.08 acres.

In Woodbury County, Sec. 11, Tp. 89, R. 44, 640 acres, and thirty other descriptions aggregating in all 14,197.25 acres.

In O'Brien County, W. $\frac{1}{2}$ SW. qr. Sec. 7, Tp. 96, R. 39, 62.25 acres and one hundred and nine other descriptions aggregating in

all 55,297.21 acres, in which is found the following land: SW. 3-97-42.

In Sioux County the NE. qr. SE. qr. Sec. 15, Tp. 97 R. 46; 40 acres, making a total of 85,457.40 acres.

Twelfth. That no further and other list of said lands was ever made either by the State of Iowa, or by the United States, nor was any other or further adjustment of the lands ever made so far as the Sioux City & St. Paul Ry. Co., was concerned, either by the State, or by the United States; nor were any of the said lands included in said list ever conveyed by the State of Iowa or by the United States to said Sioux City and St. Paul Railroad Company, or its successors or assigns, or to any one for their use and benefit, but has remained the permanent adjustment of the grant to said Railroad Company, and that at said time in 1882 when the Governor of the State of Iowa refused to convey any of said land to the said Railroad Company, and when the Iowa legislature recited the failure to complete said road in accordance with the terms and conditions of the grant and resumed the same, said railroad company had received all the lands to which it was entitled on account of the building of the road from the Minnesota State line to Le Mars,—in all amounting to 322,412.81 acres, which had been conveyed to it by the State as directly authorized to do so under the grant, and the State refused to convey any more land. The land so refused to be conveyed by reason of the failure of the Railroad Company to construct the road was the land herein enumerated and set out and included the land in question in this suit.

14 Thirteenth. Plaintiff represents that for many years after the adjustment and resumption and forfeiture of said grant to the Sioux City & St. Paul Railway Company by the Act of the Iowa Legislature and the officer of the State, and the relinquishment of the land herein in question by the legislature of the State of Iowa, to the general government, said land remained open, unoccupied, and unappropriated public land; and that more than three years after this resumption act and more than one year after the relinquishment act, to-wit on Oct. 22, 1895, plaintiff herein settled upon said land with the open and declared purpose of taking said land as a homestead, to-wit: Southwest quarter Section three (3) township ninety seven (97) Range forty two (42) O'Brien County lands, and did erect thereon a house and break and cultivate said land, putting improvements thereon of the value of Fifty dollars, and that he has ever since resided thereon, except such as he has been prevented by force by the opposing claimant and by legal process connected herewith, claiming the same as his homestead under the homestead laws of the United States; and that February 24, 1896, he tendered to the officers of the U. S. Land Office at Des Moines, Iowa, a homestead filing for said land, with the necessary legal fees therefor, which said filing for said land was from some cause unknown to the plaintiff refused by said Office, but that he continued without hindrance to reside on said land.

Fourteenth. Plaintiff further represents that on the 18th day of November, 1895, the Secretary of the Interior issued a proclamation or Notice and Instructions relating to the entry of said land herein

described, among other lands that claimed by the plaintiff, a copy of said notice and instructions being made a part hereof, and hereto attached, marked Exhibit "A." That pursuant thereto and on the 24th day of March, 1896, the plaintiff appeared at the Local Land Office at Des Moines, Iowa, and tendered his homestead filing for said land, alleging his settlement, residence and cultivation of said land and his legal qualifications to make said entry, all in full compliance with the law, and tendered the legal and proper fee and homestead filing therefor, which filing and tender of fees the Land Office held in abeyance, pending a trial and examination of the right of all parties concerned, including his own right and the claim of defendants, George W. Patterson, to purchase said land under and by virtue of an alleged contract of sale made with the Sioux City & St. Paul Ry. Co., to A. and George W. Patterson who was assignee, to purchase said land on the 21st day of June, 1887, the defendant claiming the right by reason of said contract to purchase the same of the Government under and by virtue of the fourth section of an

Act, approved March 3, 1887 (24 Stat. 556) even as against
15 the homestead and settlement rights of the plaintiff herein although defendant had never in any manner resided upon said land or cultivated the same, or in any manner attempted to comply with the homestead and settlement laws of the United States for obtaining public government land. A copy of said contract of purchase, under which the said defendant George W. Patterson claimed the right of purchase under said section not being and hereto attached, for the reason that it is in the possession of Defendant and not under plaintiff's control, and he demands of the defendants, each of them, that they furnish said plaintiff a copy thereof, or attached the same to their answer.

Fifteenth. The plaintiff alleges that said contract was made after the passage of the act of March 3, 1887, and that said contract and the lands effected thereby do not come within the terms of said act, nor the fourth section thereof; that title never having been in said company, nor anyone for its use and benefit, the Company never having earned the land, nor having been entitled to the land, the time having long since lapsed within which it might be earned from the State, and the State, which held the title under a special grant with full power of adjustment and forfeiture, had fully adjusted the grant and [forfeit-es] and resumed the land which it held,—refusing to patent the same to the Company. That said land grant was legally and fully adjusted long prior to the passage of the act of March 3rd, 1887, and the railway company had received the full amount of land that it was entitled to receive, and the full amount of land it could receive, and the time had elapsed in which it could build the road, or earn or receive any more land under the law, and that said act applied only to unadjusted land grants and only to sales made in good faith prior to the passage of the said act, and the purchase being long after all of this land had been done, and defendants were bound to take notice thereof and could not in law or equity be good faith or bona fide purchasers.

The plaintiff also alleges that said contract of purchase from the Sioux City & St. Paul Railway Company made by assignee of said

defendants was void, the same being contrary to the provisions of the granting act of 1864, and without any authority of law, which act prohibited the sale, transfer, or incumbrance of said land until the same had been earned and patented to the said company, which was never done, and of all of which defendant was bound to take notice; and plaintiff further alleges that under the law and facts, no sale or purchase could be made at the time it was made of the land described, whereby the purchaser could be entitled to the provisions of the act of March 3rd, 1887, and alleges that said George

16 W. Patterson, purchasing claimant, was bound to take notice of the refusal of the State of Iowa to convey said land to the railroad company, and of the fact that it had already received all the land that it was entitled to receive by reason of the building of the railroad from the Minnesota State line to LeMars Iowa, only, and was bound to take notice of the acts of the Iowa Legislature declaring said land forfeited, and of the relinquishment of the same to the United States in 1884, and to take notice of the failure of the Company to construct said road, as declared by the said legislative act, within the time limit of the granting act of 1864, and that it could not at the time of the purchase, or ever, be entitled to receive said land, and that it was legally impossible for the purchasing claimant to have been a good faith, innocent, or bona fide purchaser.

Sixteenth. Plaintiff represents that on the 24th day of March, 1896, he appeared at the U. S. Land Office in Des Moines, Iowa, and tendered his application affidavits of qualifications, and Eighteen dollars (\$18) fees and commission to enter said land under the homestead laws, alleging prior settlement, residence, and cultivation since October 22, 1895; but that the Register and Receiver, instead of accepting said application to enter same as a homestead, under his residence and qualifications, issued notice fixing a date for a hearing or trial in which all persons claiming said land were ordered to appear and on the 13th day of May 1896, the plaintiff herein appeared in person and with counsel, and a trial was had and evidence taken, and the Register and Receiver found against both the defendants and plaintiff, and decided that one Lewis Hoffman, not a party hereto, was entitled to said land under his homestead application, by reason of a prior filing on said land, although said Hoffman had neither residence on, nor ever cultivated said land.

The case was appealed to the Commissioner of the General Land Office, and on the 28th day of August 1899, the Commissioner of the General Land Office of the United States, at Washington, found against both defendant and plaintiff and decided that one James Beacom not a party hereto, was entitled to said land under his homestead application; a copy of which opinion, finding of facts, and decision thereunder, is hereto attached, marked Exhibit "C" and made a part hereof. Plaintiff herein further represents that the plaintiff herein appealed from this decision to the Secretary of the Interior, and that after hearing the question under the law and the evidence, the Secretary decided that the purchasing claimant had the right to purchase said land, by reason and by virtue of his contract with the Railway Company, heretofore referred to, unlawfully, and without any authority of law therefor, on the 21st

day of April, 1900, reversed the action of the Register and Receiver, and the aforesaid action of the Commissioner of the General Land Office, and unlawfully, and without any authority of law, rejected plaintiff's application to enter said land under the homestead laws of the United States, unlawfully and without authority of law, allowed the entry and proof of the said defendant, under his so-called purchase from the Sioux City & St. Paul Ry. Company under and by virtue of the act of March 3d, 1887, a copy of which said decision being hereto attached, marked Exhibit "D" and made a part hereof; and that in pursuance of said decision, and under the Order of the Secretary of the Interior, the General Land Office is about to issue, or has already issued, a patent to said land to the said defendant as purchasing claimant, solely under said so-called contract, under the fourth section of the act of March 3rd, 1887, and plaintiff alleges that said decision of the Secretary of the Interior allowing the said purchasing claimant to enter and take said land by reason of and by virtue of said contract made with the Sioux City & St. Paul Ry. Co., aforesaid, and under the fourth section of the act of March 1887, or any other section thereof, is contrary to law, and without authority to law, and absolutely void.

Seventeenth. And plaintiff, by reason of his long residence, as alleged, and cultivation of said land, and by reason of his homestead rights, and by reason of the premises herein stated, is entitled to have said land under the homestead laws of the United States and a patent thereto. And plaintiff alleges that the allowance of said patent to the purchasing claimant, and the order for issuance of the same in case the same has already been issued to the defendant on said land in all, each and singular,—unlawful and contrary to law, and without authority of law.

Eighteenth. And plaintiff further alleges that he has never sold, relinquished, assigned or abandoned his said homestead claim, and that he now resides upon the said land, and has already complied with the homestead laws of the United States as to residence, cultivation, etc., and is legally entitled to said land under said laws having resided thereon, in the manner and form described by law, for more than five years prior thereto, and that his proofs already made accepted, admitted and found by the decision of the Register and

Receiver and the Commissioner of the General Land Office, 18 should be accepted and plaintiff asks that patent to said land, allowed in favor of defendant, be either declared null and void and set aside, and the Secretary of the Interior ordered to cancel the same of the records of his office, or that the court shall issue a decree declaring that the said defendant holds the land in trust for the said plaintiff, and that said decree will order, make and declare the full and complete transfer of title to said land from the defendant to the plaintiff herein, and make such other and further order, as to the court may seem right, legal, just and equitable and proper.

Nineteenth. Wherefore may it please your honors to grant to the plaintiff a writ of subpœna, issued out of and under the seal of this court, directed to the defendants, and each of them, commanding them at a certain day, personally to appear before your Honors, and this court, and there answer all and singular, the premises, and to

perform such order and decree, as to your honors shall seem meet, and to allow plaintiff judgment and decree against the defendants, and each of them accordingly and for cost of this suit; and that this order of the Secretary of the Interior made contrary to and without authority of law, be set aside, cancelled, and declared void, and of no force and effect, or that said Beacom holds said land in trust for plaintiff and decree of conveyance to plaintiff therefor.

And the plaintiff further prays that in the event that this patent be not set aside from any reason, that plaintiff may have judgment against the defendant, in addition to the costs of this suit for Eight Thousand dollars, (\$8,000) the value of said land so erroneously, unlawfully, and improperly patented to the said defendant; and for such other relief as the court may deem meet and just.

KING & STEARNS,
Attorneys for Plaintiff.

STATE OF IOWA,
County of O'Brien, ss:

Roscoe Lyle, being duly sworn, upon oath deposes and says: That he has heard read the foregoing petition; that he is the plaintiff therein named; that the statements therein made from his own personal knowledge, he knows to be true, and those made from information and belief, he believes to be true, in substance and fact, so help me God.

ROSCOE LYLE.

19 Subscribed and sworn to before me and in my presence
this 9th day of May A. D. 1901.

[SEAL.]

WM. H. DOUMING,
Notary Public in and for O'Brien County.

"EXHIBIT A."

6-5907.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., November 18, 1895.

Register and Receiver, Des Moines, Iowa:

SIRS: During the years 1872, 1873, and 1875, certain lands were patented to the State of Iowa under the Act of Congress approved May 12, 1864, for the Sioux City and Saint Paul Railroad Company. Said company failed to complete the construction of its road as definitely located, and the State withheld from it 85,457.40 acres of the land so patented as not having been earned. Of the lands patented for the Sioux City Company, the Chicago, Milwaukee & St. Paul company recovered 41,867.52 acres, which included a part of these lands, another part thereof was reconveyed to the United States by the State of Iowa and were restored to entry, and for the balance of the United States instituted suit against the Sioux City

Company for the recovery of title. That suit was decided October 21, 1895 by the Supreme Court in favor of the United States, and said court on the same day decided that the Milwaukee Company, which had been allowed to intervene as a defendant, had no interest in the lands, and that there was no foundation for a suit by said company to compel the United States to surrender any title it may have, however such title may have been acquired.

This leaves the title to the lands involved in the suit in the United States and subject to disposal by the Department.

Therefore in order to carry their restoration to entry into effect, you will cause to be published for a period of thirty days, in some newspaper of general circulation in the vicinity of the lands, a notice that said lands, a particular description of which will be published with the notice, are restored to the public domain, and will be subject to entry on a day to be affixed by the notice, which shall be ninety (90) days from the date of the first publication and that all persons claiming any part thereof under the Act of March 20 3, 1887 (24 Stat. 556) must come forward within the ninety days, immediately following the first publication, and give notice of their claims by publishing their notice of intention to make proof in accordance with the requirements of the circular of February 13, 1889 (8 L. D. 346) upon a day which shall be subsequent to that affixed for the restoration.

To the end that complications which might arise from the former practice of suspending applications for these lands may be avoided, and the rightful claimants be enabled to acquire title with as little delay as possible, I have to direct that in the notice of restoration there be inserted a notice to all prior applicants, that their applications confer no rights upon them, and that upon the day set by you for the restoration the lands will be open to entry and disposal without regard to such applications, which shall be held by the notice to be rejected.

That all such applicants may, however, have opportunity to present new applications upon the expiration of the ninety days' notice, you will notify specially all parties shown by your records to have pending applications for these lands, of the rejection thereof, of the date of restoration, and of the necessity of presenting new applications for the protection of their rights.

In all cases of conflicting claims, you will proceed in accordance with the rules of practice in contest cases.

A list of the lands to be restored by descriptive subdivision is enclosed herein.

You will promptly forward a copy of the newspaper containing the notice of restoration, for the information of this office.

The receiver or disbursing officer, will pay the costs of publications and forward a copy of the notice, with proof of publication as his voucher for the disbursement.

Very respectfully,

S. W. LAMOREAUX,
Commissioner.

App'd:

HOKE SMITH, *Secretary.*

21 *List of Lands Involved in Suit United States vs. Sioux City and St. Paul Railway Company.*

Dickinson County.

	Sec.	T.	R.	Acres.
All	15	98	38	640.00
N. W. $\frac{1}{4}$	17	"	"	160.

800.

O'Brien County.

	Sec.	T.	R.	Acres.
S. $\frac{1}{2}$ N. W. $\frac{1}{4}$ & S. W. $\frac{1}{4}$	9	95	40	240.
S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$	7	97	40	34.50
W. $\frac{1}{2}$	5	95	41	318.64
All	7	"	"	602.00
S. E. $\frac{1}{4}$, S. W. $\frac{1}{4}$ and S. $\frac{1}{2}$ N. W. $\frac{1}{4}$	11	"	"	480.00
All	13	"	"	640.00
All	15	"	"	640.
W. $\frac{1}{2}$	19	"	"	288.76
All	23	"	"	640.00
All	25	"	"	640.00
All	27	"	"	640.
N. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$	3	96	41	39.95
S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$	15	"	"	40.00
S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$	13	97	41	40.00
E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ & N. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$	35	"	"	120.00
All	1	95	42	641.36
N. $\frac{1}{2}$ Sec. S. W. $\frac{1}{4}$, N. $\frac{1}{2}$ S. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$	5	"	"	500.82
S. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$ W. $\frac{1}{2}$, S. E. $\frac{1}{4}$ N. $\frac{1}{2}$ N. E. $\frac{1}{4}$ & S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$	7	95	42	390.41
All	9	"	"	640.00
S. $\frac{1}{2}$ N. E. $\frac{1}{4}$, S. $\frac{1}{2}$ N. W. $\frac{1}{4}$ and S. $\frac{1}{2}$ Sec.	11	"	"	500.00
All	15	"	"	640.00
All	17	95	42	640.00
S. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$, W. $\frac{1}{2}$ N. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$ N. $\frac{1}{2}$ N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$	7	95	42	390.41
All	9	"	"	640.00
S. $\frac{1}{2}$ N. E. $\frac{1}{4}$, S. $\frac{1}{2}$ N. W. $\frac{1}{4}$ and S. $\frac{1}{2}$ Sec.	11	"	"	500.00
22				
All	15	95	42	640.00
All	17	95	42	640.00
E. $\frac{1}{2}$ N. E. $\frac{1}{4}$, W. $\frac{1}{2}$ S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$ & S. E. $\frac{1}{4}$	19	"	"	353.49
All	21	"	"	640.
All	23	"	"	640.
All	27	"	"	640.
S. E. $\frac{1}{2}$ of	29	"	"	320.
E. $\frac{1}{2}$ N. E. $\frac{1}{4}$ & S. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$	31	"	"	120.00
All	3	96	"	646.16
S. $\frac{1}{2}$	5	"	"	320.
N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$ & E. $\frac{1}{2}$ S. E. $\frac{1}{4}$	7	"	"	120.
All	11	97	42	640.
All	15	"	"	640.
W. $\frac{1}{2}$	17	"	"	320.
S. W. $\frac{1}{4}$ N. E. $\frac{1}{2}$, S. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$	19	"	"	116.17
All	23	"	"	640.
All	29	"	"	640.00
E. $\frac{1}{2}$ S. E. $\frac{1}{4}$	31	"	"	80.00
All	33	"	"	640.00

All	3	97	42	595.60
S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$	7	"	"	120.00
All	9	97	42	640.00
All	17	"	"	640.00
E. $\frac{1}{2}$ N. E. $\frac{1}{4}$ & N. $\frac{1}{2}$ S. E. $\frac{1}{4}$	19	"	"	160.00
All	23	"	"	640.00
S. $\frac{1}{2}$	29	"	"	320.00
S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$	31	"	"	640.00
S. $\frac{1}{2}$	33	"	"	320.00
All	35	"	"	640.00
Total .....	..	..	..	21,979.85

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Apr.*, 1900.

I Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Commissioner's letter of November 18, 1895, to the Register and Receiver at Des Moines, Iowa and of the lists of lands which accompanied it, are true, and literal exemplifications from the record thereof in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

BINGER HERMANN,
*Commissioner of the General Land Office.**

(Copy.)

23 13-12030.

"F"
W. K. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August 28*, 1899.

LOUIS HOFFMAN, ROSCOE LYLE, ABRAHAM B. BLOOM, JAMES A.
BEACOM,
vs.
GEORGE W. PATTERSON.

S. W. $\frac{1}{4}$ Sec. 3, T. 97, R. 42. O'Brien County Lands.

Register and Receiver, Des Moines, Iowa.

SIRS: I have examined and considered the record in the case of Louis Hoffman et al., vs. G. W. Patterson, received with your letter of August 7, 1897.

This tract is one of those patented to the State of Iowa under act of May 12, 1864, for the benefit of the Sioux City & St. Paul Railroad Company, but which patent was vacated and title decreed in the Government under decision of the Supreme Court rendered October 21, 1895 (159 U. S. 349) in a suit instituted by the United States against the Company to recover title to said land.

Under instructions issued to you under date of November 18, 1895, for the restoration of said land to entry, your office pub-

lished notice that the land would be open to entry February 27, 1896, and that all persons claiming rights under the Act of March 3, 1887, should publish notice prior to that date that they would submit proof thereof on a day to be therein set.

In compliance with this requirement, George W. Patterson filed notice to make proof May 12, 1896, of his claim under act March 3, 1887, as a purchaser from the railroad company of the SW $\frac{1}{4}$ Sec. 3, T. 97, R. 42, "except one acre in southwest corner for school house."

The district township of Floyd School Board filed notice to make proof April 7, 1896, of its claim under said act as a purchaser from the railroad company, to one acre in SW $\frac{1}{4}$ said Sec. 3.

James A. Beacom filed notice under said act to prove his claim to said tract of land, but not as a purchaser from the railroad company.

24 May, 12, 1896, he filed homestead application for the tract alleging settlement October 22, 1895.

Abraham B. Bloom and Roscoe Lyle also gave notice of intention to make proof under said act, but neither of them claim as purchasers from the company, and May 12, 1896, Bloom filed homestead entry and March 23, 1896, Roscoe Lyle filed homestead entry for the land, alleging settlement October 22, 1895.

February 27, 1896, the day of opening, Louis Hoffman filed his homestead application for the tract but does not allege any prior settlement or improvement.

You report applications as having been filed by a number of other persons, all of whom defaulted at the hearing, and whose applications were therefore rejected. No appeals from this action having been taken, by any of the parties, the same has become final and their cases are closed and their applications will be no further considered.

Hearing was held May 12, 1896, there were present;

George W. Patterson, with his attorney W. P. Jewett, and O. M. Barrett.

The School Board, by its attorney W. P. Jewett;

The School Board, by its attorney, J. F. Conrad;

A. B. Bloom, with his attorney H. H. Griffiths;

Louis Hoffman, with his attorney A. P. Lowery.

Roscoe Lyle, with his attorneys King & Stearns.

Testimony.

The testimony on behalf of Patterson is to the effect that June 21, 1887 J. H. Pasco, purchased under contract with the Sioux City & St. Paul Railroad Company, "the southwest quarter less one acre as described in deed A. 137, in southwest corner" of Section 3, T. 97 R. 42, containing 139 acres; that he broke and cultivated the land until 1889; that July 17, 1889 he assigned the contract to A. and G. W. Patterson for consideration of \$800.; that A. Patterson with his father, who died in October 1893, and he succeeded to all his rights; that he, George Patterson, April 25, 1895, an-

tered a modified contract with the company whereby he agreed, in general terms, that in the event of a decision of the United States Supreme Court, adverse to the railroad company, he would surrender the original agreement and this modification thereof to the company and receive therefor the amount, with interest, which had been paid on said agreement on account of principal and interest; that he has cultivated all of said land by tenants to current year;

25 has paid all [taxed] and \$714 of the principal and interest on deferred payments, and that there was no question in his mind as to the company's title prior to decision of Judge Shiras (which was the decision of the United States Circuit Court rendered October 20, 1890) and did not know the Governor had refused to patent this land to the Company.

In behalf of Beacom, the evidence is that he settled upon the land October 22, 1895, and took up his residence thereon in a shanty which Pasco had built on the tract, and resided there about five months when one day in March 1896, while absent, Patterson hauled it off, claiming it was his, acquired under purchase of contract from Pasco; that he, Beacom put up another house about two days later, on same spot, and has occupied it ever since and is now living in it, and has the whole tract in crop.

He also states that he made a homestead entry in 1893, on NW $\frac{1}{4}$, Sec. 35, T. 157, R. 42, Devil's Lake District, North Dakota, but he abandoned the land. The records of this office show that May 26, 1893, James A. Beacom made Homestead entry 5056 Devil's Lake District, North Dakota, for said NW $\frac{1}{4}$ Sec. 35, T. 157, R. 42, and that the same was cancelled November 13, 1896, in contest proceedings wherein Beacom made default, the evidence showing he had not resided upon or improved the land.

On behalf of Lyle it is shown that he went upon the tract about seven o'clock of the evening of the 22nd of October in a wagon and staid there all night, and that in the morning of the 23d he hauled on a house which he had purchased from his father, and staid there that day and night. He asserts also that he commenced plowing that day but Beacom told him to stop and threatened him with a pistol; that on the 24th while he was off the land his house was moved off into the road by several men; that he went over to move it back but was told by them that if he did so they would split it to pieces, so he left it stand in the road; (It does not appear, however, that Beacom took any part in this proceeding or authorized it)—and the house remained there until the 20th of March, when he moved it back and lived there until the 13th April; that when he moved it back Beacom sued him and obtained judgment against him April 11, and the house was pulled off into the road by the Sheriff, where it still remains.

On behalf of Bloom, the testimony is to the effect that he was a resident upon the SE $\frac{1}{4}$ Sec. 4, which he owned and which adjoins the land in dispute, and that he broke a few furrows on the disputed tract in 1875 or 1876 to serve as a firebreak; that in 1884 he widened the breaking, which comprises in all about a
26 half-acre of ground, and planted potatoes in it; that he has cultivated this half acre every year since but has never resided

on the tract or put any other or further improvements on it,—did nothing except to plow and cultivate this half acre of ground.

For the School Board, it is shown that the Board purchased and obtained title by warrantee deed from the company executed June 22, 1887, one acre of this quarter section described in the deed as follows;

“Commencing at a point fifty (50) links east and fifty (50) links north of the south west corner of Section three (3) in Township Ninety seven (97) north of Range forty two (42) west of the fifth principal meridian; thence north three chains and sixteen and one fourth links (3 ch. $16\frac{1}{4}$ l.); thence east three chains sixteen and one fourth links (3 ch. $16\frac{1}{4}$ l.) thence south three chains sixteen and one fourth links (3 ch. $16\frac{1}{4}$ l.); to place of beginning containing one acre:” that subsequently a school house was erected thereon and now exists there.

In behalf of Hoffman, he testifies that he is a naturalized citizen of the United States and his certificate of naturalization appears to have been offered in evidence showing that he was naturalized November 1, 1892, in district court of Polk County, Iowa, but neither the certificate nor a certified copy accompanies the record; he also testifies he first saw the land in April 1896.

Upon this evidence you decide April 21, 1897;

1st. That Patterson had such knowledge of the condition of the title of the company that his purchase does not bear the elements of good faith contemplated by the fourth section of the Act of March 3, 1887.

2nd. That while Beacom's settlement would give him the preference right of entry, yet he had exhausted his homestead rights by his prior entry made in Devil's Lake district, North Dakota.

3rd. That Lyle submits no evidence to support claim under Act 1887.

4th. That Bloom never resided on the land and fails to substantiate his claim under said Act.

5th. That on February 27, 1896, no person had a legal valid claim to the land, and that Louis Hoffman filed the first legal application for the tract.

You therefore reject the applications of Patterson, Beacom, Lyle and Bloom, and approve the application of Hoffman.

27 Appeals have been filed by Patterson, Beacom and Lyle.

Following the filing of said appeals, Beacom submitted affidavits and motion for re-hearing on the ground that your office disregarded and ignored the circular instructions of March 23, 1895, under Act of December 29, 1894, amendatory of the third section Act March 2, 1889.

He makes affidavit that he made homestead entry as stated in his evidence, but that he never resided on said land and never made any improvements on it because at the time he made the entry he paid every cent he had in the world for filing fees in the land office and then owed the Notary who made out the papers a part of his fee; that he intended to go to work and earn money to improve said land and establish his home thereon, but could get no work and was obliged a part of the time to work for his board; that in that

season of 1893, there were hot winds in North Dakota which destroyed the crops and no work could be had; that he made every effort to make [effort to make] money to improve said land and establish his residence there, but on account of his being unable to get work and his poverty, he was unable to do so, and not making the required improvements and residence the land was taken from him by contest.

He also states in his motion that owing to the conditions and facts set out in said affidavit, it was not possible for him to retain the land and comply with the laws of the land department, and he so stated to the Register and Receiver of the local land office at Devil's Lake and was told by those officers that under the facts and circumstances he had not lost his right to make a second homestead entry, and relying on said statements he made his settlement and tendered his filing on the land on controversy in good faith; that at the time of the trial in the present case, relying implicitly on the statements made to him by the district officers at Devil's Lake, he did not come prepared and did not put in his testimony as fully as he otherwise would have done.

He therefore requested that your decision be set aside and the case opened for further hearing in order that he may put in his evidence as set forth in his affidavit.

Upon this petition you set aside your decision and order a new trial, to be held September 14, 1897.

Whereupon Patterson moved for a writ of Certiorari to bring up the record from your office under your decision on the merits of the case.

28 And under date of July 28, 1897 the Department ruled that your office had no jurisdiction of the case after decision was rendered, by you and appeals taken, and had no authority to issue the order for re-hearing.

You were therefore directed by my letter of August 4, 1897 to forward the record in the case and which I have now considered.

Decision.

It is only necessary to say with respect to the claim of Patterson, as assignee of Pasco, the purchaser from the company, that the modified contract entered into by him with the company is in the same terms as the one made with the company by Ole Olson in the case of Olson vs. Travor, et al. (26 L. D. 350) and which the Department therein held was fatal to his claim as a purchaser.

Under that decision the claim of Patterson is eliminated from the case and for this reason I affirm your decision rejecting his application and claim.

Bloom, never made a settlement on the land and his only connection therewith has been the cultivation of about half an acre, and he has taken no appeal from your decision adverse to him, said decision is therefore final and his case is closed.

Hoffman claims as rights by way of prior settlement and rests upon his application to make entry filed February 27, 1896; his

rights are therefore subordinate to those of Beacom and Lyle, both of whom made settlement after the land became subject thereto and prior to the day it became subject to entry.

• When however Lyle went on the land it was already in possession of Beacom, he having gone on and taken up his residence early in the day of the 22nd October, while Lyle did not go on until about seven o'clock in the evening of that day and put on his house in the morning of the 23d. This house was moved off on October 24th, by some men and upon attempt to replace it he was threatened with its destruction if he did so. Beacom, however, does not appear as having taken any personal part in this affair, but Lyle asserts Beacom threatened him with a pistol when he commenced plowing on 23rd.

About 20th March however, he again moved his house on and on the 23rd of March filed his homestead application; but suit was then brought against him by Beacom for possession, which was decided in the latter's favor, and under said decision the Sheriff removed his house from the land April 13, and the law has since stood between him and Beacom, but he resided there from 20th March to the removal April 13th.

29 It would be inequitable and unjust to permit the absence prior to February 27, 1896, virtually by duress, to defeat his claim as against Hoffman, who has always been a stranger to the land in the matter of any settlement or improvement.

I must therefore, overrule your decision in favor of Hoffman and reject his application.

Now as to Beacom, there is no doubt he went upon the land and commenced settlement before Lyle and he has since continued to live there, first in a house then on the land and then in one built by himself; he also has the whole tract in crops and the only question as to his superior rights is as to his right to make a second homestead entry, he having previously made an entry which however he says he abandoned but does not say why.

Upon the record therefore as it stands your decision adverse to him would be correct.

Beacom appealed from said decision, but on May 29, 1897, within the time allowed by the rules he submitted motion and affidavit for a re-hearing as above set out and directly thereafter withdrew his appeal.

This motion you entertained and ordered new hearing which was overruled by the Secretary.

The motion therefore now comes before me to determine whether the same should be granted.

Beacom claims the right to make second entry by virtue of the Act of December 29, 1894, (28 Stat. 599—General Circular of 1896, page 219.)

This Act is amendatory of the third section Act March 2, 1889 (25 Stat., 854 General Circular of 1895, page 171) and permits any settler who has theretofore forfeited his entry for any of the reasons stated in said third section, to make another entry under the homestead law.

The reasons given in the said third section are "total or partial

destruction or failure of crops, sickness, or other unavoidable [causalty]."

The Department has ruled that this act is "beneficial and remedial and should not be narrowed by a strained construction", (Hertzke vs. Honermond 25 L. D., 82) and of course the amendatory act of 1894 is equally remedial.

In Charles A. Garrison (22 L. D. 179) it is held that (Syllabus) "The right to make a second homestead entry may be recognized where the first was canceled on account of the entryman's failure to establish residence and such failure was due to circumstances beyond his control."

In that case special reference is made to the case of James M. Frost et al. (16 L. D. 145) wherein Frost was allowed to abandon his first entry and make another where an adverse entry had intervened.

In Patrick H. Guthrey (26 L. D. 549) it is ruled that (Syllabus) "The right to make a second homestead entry under the Act of December 29, 1894, will not be defeated by the fact that the entrymen sold the improvements on the land conveyed by his first entry and relinquished his claim thereto where it appears that on account of a protracted drouth, such action was made necessary to secure the mean of subsistence."

It was such drouth and poverty that Beacom asserts forced him to abandon his claim.

In case of Charles Wolters 8 L. D. 131, quoted to James H. Frost et al. supra) the Department says;

"The rule which limits to one homestead entry is based upon a view of the Statute which I follow only because it has been long maintained in the Department and Land Office and has some public considerations in support of the general policy; but it has been repeatedly engrafted with exceptions where justice required exceptions.

Under the construction of the law as above exemplified, I am of opinion that the circumstances alleged by him surrounding, his first entry under which he relinquished or abandoned it are sufficient to give him the right to a second entry, and the only question is, shall he be accorded a re-hearing in the present case to prove the facts.

As this decision runs, this hearing would be solely between him and Lyle.

The evidence it is proposed to submit is not newly discovered, nor is it such that might not have been produced at the trial; but Beacom states that he relied upon the answer of the district officers when he informed them he could not comply with the law, that under the facts and circumstances he had not lost his right to make a homestead entry and relying thereon he made his present settlement and application to enter and did not put in his testimony as fully as he other-wise would have done; in other words, that he was ignorant of the necessity to show why he had abandoned that land.

Beacom was the first actual settler on the land in dispute, and has

31 complied with the requirements of the statute; in that respect his claim is bona fide and he is entitled to every equitable consideration and those point unmistakably to the granting a hearing to him to show why he is entitled to the benefit of the law of 1894; in other words, the circumstances under which he gave up his former entry.

Should this decision become final such hearing will be accorded him, of which due notice will be given Lyle.

Finally as to the School Board, I am of opinion that the purchase made by it of the one acre for school purposes was made in good faith and that it is entitled to enter said tract under the fourth section of the Act of 1887.

In the description of boundaries in the copy of the deed filed that of the west boundary does not appear; this defect must be cured before final entry is made.

Notify all parties in interest of this decision, allowing usual time for appeal.

Mr. Patterson will be informed hereof by this office through his resident counsel.

The NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of the tract is claimed as swamp which you will dispose of under circular of December 13, 1886, 5 L. D. 279, before any entry is allowed.

Very respectfully,

W. A. RICHARDS,
Acting Commissioner.

WWG
Vol. 27
No. 695
W. V. D.

F. C. D.
F. L. C.
F. W. C.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, April 21, 1900.

LOUIS HOFFMAN, ROSCOE LYLE, et al.

vs.

GEORGE W. PATTERSON.

Sec. 4, Act of March 3, 1887. (24 Stat., 556) O'Brien County Lands.

The Commissioner of the General Land Office.

SIR: George W. Patterson, Roscoe Lyle and Louis Hoffman, have filed separate appeals from the decision of your office dated August 28, 1899, in the case of Louis Hoffman, Roscoe Lyle, et al., vs. George W. Patterson, involving the SW $\frac{1}{4}$ Sec. 3, T. 97 R. 42 W., Des Moines Iowa, land district, which is a part of the O'Brien County lands involved in the suit of the Sioux City & St. Paul Railway Company vs. United States, wherein a decree was rendered by the Supreme Court of the United States, dated October 21, 1895, (159 U. S. 349) quieting title in the United States.

Your office decision denies the application of George W. Patterson for confirmatory patent under section 4, of the act of March 3, 1887 (24 Stat. 556) for the land applied for by him, being the SW

¼, Sec. 3, Tp. 97 N., R. 42, W., "Except one acre in the southwest corner for a school house," awarded the District Township of Floyd School Board a right to confirmatory patent under said act of March 3, 1887 for the land embraced in its application, being one acre situated in the Southwest corner of said southwest quarter of Sec. 3, (being particularly described in a deed from the Sioux City & St. Paul Railroad to said District Township of Floyd School Board.)

Said decision also denied the homestead application of Louis Hoffman and Roscoe Lyle for said land and held that in the event of your office decision becoming final, James A. Beacom who is found to be the first actual settler on the land and who filed homestead application for the land in controversy, alleging settlement October 22, 1895 (which homestead application was an application to make a second homestead entry by virtue of the act of December 29, 1894 (28 Stat. 599) would be granted a hearing to show why he is entitled to the benefit of the said act of December 29, 1894, *supra*.

The record history and the facts in the case, upon examination of the record, are found to be substantially as stated in the decision of your office and need not be now recited.

The action of your office denying the application of Patterson for confirmatory patent under section 4 of the act of March 3, 1887 *supra*, was based upon the ground that Patterson had subsequently to his purchase of the said land by assignment from one J. H. Pasco, who entered into a contract with the Sioux City & St. Paul Railroad company for the land in controversy on June 21, 1887, entered into and made a modified agreement with the said railroad company such as was involved in the case of Olson vs. Traver (26 L. D. 350) and had thereby abrogated his rights under his purchase.

While this holding was in harmony with the decision in the said case of Olson vs. Traver this Department in the case of Burton et al. vs. Dockendorf, (29 L. D. 479) held that such a supplemental contract as was involved in said case of Olson vs. Traver, 33 *supra*, did not defeat the right of a purchaser of land from a railroad company to confirmatory patent under section 4 of the Act of March 3, 1887 *supra*, where such contract had not been enforced.

For the reasons given in the said case of Burton et al. vs. Dockendorf, the action of your office denying the application of Patterson for a confirmatory patent to the land applied for by him is reversed, and Patterson's said application will be allowed.

The action of your office approving the application of the District Township of Floyd School Board for the land embraced in its application is hereby affirmed.

The respective homestead applications of Hoffman, Lyle and Beacom are hereby rejected.

Other homestead applications were filed for the land in controversy by the several parties mentioned in the decision of your office, but as the said parties have failed to continue to prosecute their respective applications no further consideration need be given them herein and they stand rejected.

The direction of your office as to the swamp claim of the State of Iowa for the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Sec. 3, T. 97 N., R 42 W., is, under the decision of this Department in the case of Genevey vs. Georgen et al. (29 L. D. 321) rendered unnecessary and will not be followed in the disposal of this case.

Herewith are returned the papers.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

Endorsed: No. 210 Roscoe Lyle vs. Geo. W. Patterson, J. H. Smith, Thomas Beacom. Bill in Equity. Filed May 24, 1901. A. J. VanDuzee, Clerk, by J. H. Bolton, Deputy.

And on the 1st day of July 1901 there was filed in the office of the Clerk of said Court in this cause a Subpœna in Chancery and Marshal's return of service thereon, which is in words and figures following, to-wit:

UNITED STATES OF AMERICA,

Northern District of Iowa, Western Division:

The President of the United States to George M. Patterson, T. H. Smith, W. M. Smith, and Thomas Beacom:

34 We command you and each of you, that you appear before the Judge of the Circuit Court of the United States for the Northern District of Iowa, at Sioux City, on the First Monday of July it being the 1st day of July, next (A. D. 1901) to answer to the bill of complaint of Roscoe Lyle, this day filed in the office of the Clerk of said Court, and then and there to receive an abide by such judgment and decree as shall then and thereafter be made upon pain of such judgment being pronounced — you by default.

To the Marshal of the Northern District of Iowa: Returnable to the July Rule Day, it being Monday the 1st day of July A. D. 1901.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the U. S. at Sioux City this the 24th day of May A. D. 1901, and of the Independence the 125th year.

[SEAL.]

A. J. VANDUZEE,

Clerk U. S. C. C. Northern District of Iowa.

J. H. BOLTON, *Deputy.*

Memorandum.

The within named defendants are notified that unless they enter their appearance in the Clerk's office of said Court at Sioux City aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

[SEAL.]

A. J. VANDUZEE,

Clerk U. S. C. C. Northern District of Iowa.

J. H. BOLTON, *Deputy.*

(Marshal's Return.)

This writ came into my hands for service on the 27th day of May A. D. 1901, and I served the same on the within named T. F. Smith, W. M. Smith and Thomas Beacom, on the 5th day of June 1901 T. H. Smith at Sheldon, Wm. M. Smith, at Sheldon, and Thomas Beacom 6 m N. E. Sheldon, (Geo. W. Patterson not found) by delivering true copy of the same to T. H. Smith, W. M. Smith, and Thomas Beacom, in the County of O'Brien, and State of Iowa, Edward Knott, U. S. Marshal; J. A. Tracy, Deputy.
 Marshal's fees, \$13.16; paid by King & Stearns.

Endorsed: No 210. Equity Subpoena in Chancery, Circuit Court of the United States Northern District of Iowa. Roscoe Lyle vs. G. W. Patterson et al. Returnable to Rule day first Monday in July 1901. A. J. Van Duzee, Clerk, by J. H. Bolton, Deputy. Filed July 1, 1901, A. J. DanDuzee, Clerk, by J. H. Bolton, Deputy.

35 And on the 1st day of July 1901 there was filed in the office of the Clerk of said Court in this cause a Demurrer, which is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Western Division.

ROSCOE LYLE, Plaintiff,

VS.

GEORGE W. PATTERSON, T. H. SMITH, W. N. SMITH and THOMAS BEACOM, Defendants.

Demurrer of Defendants Geo. W. Patterson, T. H. Smith, W. N. Smith, and Thomas Beacom.

The defendants not confessing all or any of the matters in the Bill of Complaint contained, to be true, as therein set forth, doth demur to said bill for that the same does not state such case, nor contain any matter of equity, entitling the plaintiff to any relief against the defendants, or any of them.

Wherefore, they pray a judgment of the court, whether they shall be compelled to further answer said bill, and further pray to be dismissed with their costs.

W. D. BOIES,
Solicitor for Defendants.

I, W. D. Boies, Solicitor for the defendants in the above entitled cause, do hereby certify that the foregoing demurrer to the Bill of Complaint is, in my opinion well founded in law.

W. D. BOIES.

UNITED STATES OF AMERICA,
Northern District of Iowa, Western Division, ss:

I, W. D. Boies, being duly sworn, on my oath do depose and say that I am the solicitor for all the defendants named in the foregoing demurrer, that I am also duly authorized by virtue of such employment to appear and make this affidavit, and that my knowledge of the matters and things in hearing in the defendant's defense to said cause of action is superior to that of the defendants themselves, and that I am more competent to make this affidavit than either of the defendants, and I depose and say that the foregoing demurrer is not filed for the purpose of delay.

W. D. BOIES.

36 Subscribed in my presence and sworn to before me by the said W. D. Boies, this 1st day of July A. D. 1901.

WILLIAM E. CODY,
Notary Public in and for Woodbury County, Iowa.

Endorsed: Demurrer. Filed July 1, 1901. A. J. Van Duzee, Clerk, J. H. Bolton, Deputy.

And on the 5th day of August 1901 there was filed in the office of the Clerk of said Court in this cause an Order of service on absent defendant, and Marshal's return of service endorsed thereon, in words and figures as follows:

In the United States Circuit Court, Northern District of Iowa, Western Division. Equity.

ROSCOE LYLE

vs.

GEORGE M. PATTERSON et al.

It appearing that the above entitled suit in equity is brought for the purposes, among other things, of settling the title and claim of the Complainant Roscoe Lyle, to certain realty being the South West quarter of Section three (3) Township Ninety seven (97) North, of Range Forty-two (42) West of the 5th P. M., and its further appearing that personal service of the subpoena in the case cannot be made within the Northern District of Iowa upon George M. Patterson, one of the defendants named in the Bill he being a non-resident of Iowa residing in the State of Minnesota, and not being found within the State of Iowa.

It is therefore ordered that the said George M. Patterson be and he is hereby required to appear herein and to plead to said Bill of Complaint on or before the first Monday of September 1901, or default will then be entered against him, and it is further ordered that service of this order be made personally upon said George M. Patterson by the Sheriff of Nobles County, State of Minnesota, at least twenty (20) days before said first Monday of September 1901; service

to be made by reading the order to said Patterson and giving him a copy thereof and return of service to be made under oath upon a duly certified copy of the order issued under the seal of this Court.

O. P. SHIRAS, *Judge.*

July 3rd, 1901.

I hereby certify that the foregoing is a true and correct copy.

[SEAL.]

A. J. VANDUZEE, *Clerk,*
By J. H. BOLTON, *Deputy.*

37

Return of Service.

STATE OF MINNESOTA,
County of Nobles, ss:

I, Mike Reiter, Sheriff of Nobles County, State of Minn., do solemnly swear, that I received the within certified order for service on the 31st day of July 1901, and that on the 31st day of July 1901, at Worthington, in said Nobles County Minn., I served the same personally on George W. Patterson, the defendant named therein, by reading the within order to the said George W. Patterson, and by giving him a certified copy of the said order issued under the seal of the United States Circuit Court, Northern District of Iowa, Western Division.

MIKE REITER,
Sheriff Nobles County, Minn.

Subscribed and sworn to by Mike Reiter, Sheriff of Nobles County, Minnesota, in my presence this 31st day of July 1901.

[SEAL.]

C. M. CORY,
Judge of Probate Court, Nobles Co., Minn.
Sheriff's fees \$1.45.

Filed Aug. 5, 1901. A. J. Van Duzee, Clerk. By J. H. Bolton, Deputy.

And on the 5th day of May 1902 there was filed in the office of the Clerk of said Court in this cause, a Petition for Intervention; also Separate Answer and Cross Bill,—on behalf of Louis Hoffman,—which Petition of Intervention; separate answer and cross bill are in words and figures following, to-wit:

In the Circuit Court of the United States, Northern District of Iowa, Western Division, May Term, 1902.

Equity No. 210.

ROSCOE LYLE, Plaintiff,

VS.

GEO. M. PATTERSON, T. H. SMITH, W. M. SMITH, and THOMAS BEACOM, Defendants; LOUIS HOFFMAN, Intervenor.

Petition for Intervention.

Comes now Louis Hoffman, a citizen of the State of Iowa and of the United States, and shows the Court that he is interested in the subject matter of this suit, as will more fully appear in his answer hereto; attached and made a part hereof, and prays the court to be allowed to intervene in the above entitled cause and to be made a party defendant therein, and that the answer attached to this petition of intervention may be filed as the full and complete answer of your petitioner.

Your petitioner shows the court that theretofore the plaintiff, Roscoe Lyle, filed his petition in the above entitled cause in the Circuit Court of the United States, Northern District of Iowa, Western Division, against the defendants Geo. M. Patterson, T. H. Smith, W. H. Smith, and Thomas Beacom, alleging in substance that he was a citizen of the United States residing in the County of O'Brien and State of Iowa and that he had a right to enter the land in controversy under the laws of the United States, said land being the SW $\frac{1}{4}$ section three (3) township Ninety seven (97) Range forty two (42). That the defendants are citizens of the United States, except the defendant G. M. Patterson, who resides in the State of Minnesota, and that the said described land had been patented to the defendant Patterson under and by virtue of a decision of the Secretary of the Interior, holding that said Patterson was a bona fide good faith purchaser from the Sioux City & St. Paul Railway Company of the aforesaid described land and was entitled to a confirmatory patent from the United States under the fourth section of the Act of Congress of March 3, 1887; and further alleging that said patent so issued was erroneously issued under a misapprehension and misapplication, and wrongful construction by the Secretary of the Interior of the laws of the United States, and praying that the said decision of the Secretary of the Interior may be set aside and held for naught and that the defendants holding the legal title to said land under said patent, should be held to hold the title thereof in trust for the plaintiff, and that in the event that the patent should not be set aside for any reason, that the plaintiff should have judgment against the defendant for costs of this suit and an additional sum of eight thousand dollars (\$8,000) the value of his said land.

This intervenor further shows the Court that he is interested in the subject matter of this suit and is entitled to the land in contro-

versy, as will more fully appear by his answer thereto attached and made a part of this petition.

Wherefore, this intervenor prays that he may be made a party defendant in this suit to the end that he may present his claim and be heard as to his rights in and to said land and that the answer hereto attached may be filed in this suit as his full and complete answer to the plaintiff's petition and as his full and complete allegation of right against the plaintiff and each of the defendants and that he may be permitted to join issue with the plaintiff and each of the defendants and be heard in support of his rights in all matters pertaining to this suit.

LOUIS HOFFMAN,
By C. B. EVANS,
His Attorney and Solicitor.

E. B. EVANS,
Solicitor for Intervenor.

Circuit Court of the United States, Northern District Iowa, Western Division, May Term, 1902.

No. 210. Equity.

ROSCOE LYLE, Plaintiff,
vs.

GEO. M. PATTERSON, T. H. SMITH, W. H. SMITH and THOMAS BEACOM, Defendants; LOUIS HOFFMAN, Intervenor.

Separate Answer and Cross-Petition of Louis Hoffman.

Leave of court first being had and obtained Louis Hoffman, by way of Intervention and in answer to the plaintiff's bill and as a cross petition, against the plaintiff and defendants, states;

Par. 1. That he is a citizen of the State of Iowa, and now resides in Page County, in the State of Iowa; that on the 27th day of February 1896, he was a resident of Polk County in the State of Iowa; and was a citizen of the State of Iowa and of the United States; that he has not heretofore exercised his right as a citizen of the United States to enter any portion of the public domain of the United States under the laws of the United States.

Par. 2. This intervenor, and defendant adopts as a part of his answer the following paragraphs of the plaintiff's bill to-wit;

All of the second paragraph, thereof, all of the third paragraph thereof, including the Act of Congress therein set out; all of the fourth paragraph thereof; all of the fifth paragraph thereof all of the sixth paragraph thereof including the message from the Governor of the State of Iowa therein set out; all of the seventh paragraph thereof, including the Act of General Assembly therein set out; all of the eighth paragraph thereof, including the Act of the Iowa Legislature therein set out; all of the ninth paragraph thereof; all of

the tenth paragraph thereof; all of the eleventh paragraph thereof; all of the twelfth paragraph thereof.

40 Par. 3. As to paragraph 13 of the complainant's bill, this intervenor and defendant has not sufficient knowledge upon which to form a belief, and therefore, denies the same, and further states that whatever pretended settlement, residence and occupation the claimant may have had or attempted on the land in controversy, was made at a time when the land was not subject to entry and when no legal settlement rights could have attached thereto, and that such pretended settlement or occupancy or residence was illegal and of no effect, and specifically denies that the complainant ever made a bona fide settlement or improvements or that he ever, in good faith, occupied the premises under the homestead laws of the United States.

Par. 4. Answering paragraph fourteen of this complainant's bill, this defendant and intervenor denies that the complainant obtained any legal status or right to the land involved in this case by reason of the alleged tendering of his homestead filing or any proceedings therein set forth as having been taken on behalf of the complainant, but adopts so much of the said paragraph fourteen as refers to the proclamation of the Secretary of the Interior and as refers to the contract of purchase made by the defendant, Geo. M. Patterson, with the Sioux City & St. Paul Railway Company.

Par. 5. The defendant and intervenor adopts paragraph fifteen of complainant's bill and admits the truth of the statements therein contained.

Par. 6. As to paragraph sixteen of complainant's bill, this defendant and intervenor admits the truth of the statements therein contained concerning the proceedings had before the Register and Receiver of the United States Land Office at Des Moines, Iowa, and the Commissioner of the General Land Office at Washington D. C., Secretary of the Interior, but does not adopt or admit the conclusions of law therein [aset] out, but alleges in contravention thereof that the decision of the Commissioner of the General Land Office and of the Secretary of the Interior and the allowance of the patent to the purchasing claimant by the Secretary of the Interior and the issuance of the patent on the decision of the Secretary of the Interior, were each and singular unlawful and contrary to law and without authority of law and alleges further that the decision of the Register and Receiver of the United States Land Office at Des Moines Iowa, awarding the land to this defendant and intervenor, was lawful and in compliance with the laws of the United States, and fully and entirely determined the questions of fact and the law involved in this case; a copy of said decision is attached hereto,

41 marked Intervenor's Exhibit One, and made a part of this answer.

Paragraph 7. As to each and all of the further allegations of complainant's bill, this intervenor and defendant states that he has not sufficient knowledge or information to form a belief, and therefore denies the same, and prays the court to require strict proof of each and every allegation.

Cross-Petition.

By way of cross petition, against the complainant and each of the defendants mentioned in plaintiff's bill, this intervenor and defendant states;

Par. 1. That this intervenor and defendant, Louis Hoffman, is a citizen of the United States, over twenty one years of age, and that he is qualified under the laws of the United States to make an entry of 160 acres of land and that he was so qualified on the 27th day of February 1896.

Par. 2. That on the 27th day of February 1896, the land in controversy to-wit the SW quarter of Section three (3) Township ninety seven (97) Range forty two (42) was a portion of the unoccupied, unsettled, public domain of the United States; that the legal and equitable title to said land was in the United States; that under and by virtue of the laws of the United States and of the decision of the Supreme Court of the United States and of the decision of the Secretary of the Interior and his subordinate officers, the said land became subject to homestead entry at 9 o'clock A. M. on the said 27th day of February A. D. 1896.

Par. 3. That on the 27th day of February 1896, at 9 o'clock A. M., the said land, being the land in controversy in this suit, was subject to entry by the first legally qualified applicant, who should make application to enter the same under the homestead laws of the United States.

Par. 4. On the 27th day of February 1896, at 9 o'clock A. M. of said day, this intervenor and defendant, Louis Hoffman, prepared his homestead application to enter said land together with his affidavit showing his qualification to enter the same, and presented the same together with the legal fees and commissions to the Register and Receiver of the United States Land Office at Des Moines Iowa, being the officers and the office before whom and in which applications to enter said land should be filed. That the application of this defendant and intervenor was the first legal application filed with

42 said officers in said office to enter the land in controversy, and that upon the filing of said application and the presentation thereof by this defendant and intervenor, that this defendant and intervenor was entitled to have his application approved and his entry for the land in controversy allowed, and that all proceedings thereafter had by the Secretary of the Interior or his subordinate officers which denied the right of this defendant and intervenor to enter said land as a homestead were illegal and void and that the decision of the Commissioner of the General Land Office and the decision of the Secretary of the Interior and the patenting of said land to the defendant Patterson, were each and severally illegal and void, and founded upon a mistake of law and a misapprehension and misapplication and wrongful interpretation of the laws of the United States pertaining to the disposal of public lands.

Par. 5. This defendant and Intervenor, Louis Hoffman, further

alleges that the pretended application of the complainant and of the defendants mentioned in complainant's bill to enter the land in controversy were all and severally junior to the application of this defendant and intervenor, and conferred no right whatever upon the complainant or said defendants, and that the action of the Secretary of the Interior and his subordinate officers recognizing the rights of either the plaintiff or said defendants were each and severally void and illegal, and were rendered on a misapprehension and a misinterpretation and wrongful construction of the laws of the United States.

Par. 6. That defendant and Intervenor Louis Hoffman, further states that the Secretary of the Interior, the Commissioner of the General Land [officer], and the Register and Receiver of the United States Land Office at Des Moines, Iowa, each and severally found the facts to be that this defendant and intervenor's application was the first application filed to enter the land which was filed on February 27th, 1896, and that each of the applications to enter the land filed by the complainant and the defendants aforesaid were filed after said land was restored to the public domain, and was subject to entry, and were filed after the application of this defendant and intervenor.

Par. 7. This defendant and intervenor, Louis Hoffman, further alleges that the only reason for not approving his application to enter said land and allow his entry by the Secretary of the Interior and his subordinate officers grows out of the misinterpretation, misconception, misapplication, and misconstruction of the laws of the United States and grows out of the mistakes of the Secretary of the Interior and his subordinate officers in applying the laws of the United States to the facts in this case.

43 Wherefore, this defendant and intervenor Louis Hoffman, prays the Court that the premises being seen, the patent issued by the United States to the defendant G. M. Patterson, may be cancelled and set aside, and held for nought, and that the pretended transfers of title to said land under said patent from the said G. W. Patterson to the other defendants in this case, may be set aside, canceled and held for nought, and that the decision of the Secretary of the Interior awarding said land to the defendant G. M. Patterson may, by decree of this court, be held to have conferred no right upon the said G. M. Patterson to the land in controversy, and that the decree of this court may be that on the 27th day of February 1896, at 9 o'clock A. M. of said day said land was a portion of the public domain of the United States, subject to entry by the first legally qualified homestead applicant, and that the decree may further show that this defendant and intervenor filed the first legal application to enter said land after the same was subject to entry under the laws of the United States.

If it shall be found that the prayer of the defendant and intervenor as set forth in the preceding paragraph, cannot be granted then this defendant and intervenor prays the court that he may have judgment against the defendant G. M. Patterson, T. H. Smith, W. H. Smith, and Thomas Beacom, in the sum of Eight Thousand dollars (\$8,000.00) being the value of the land in controversy, and this de-

defendant and intervenor further prays for such other and further relief as he may in equity and good conscience be entitled to.

LOUIS HOFFMAN,
By E. B. EVANS,
His Attorney and Solicitor.

E. B. EVANS,
Solicitor for Louis Hoffman.

STATE OF IOWA,
Polk County, ss:

I, E. B. Evans, being first duly sworn, do depose and say that I am attorney for Louis Hoffman, the defendant and intervenor in the above entitled cause that I have knowledge of the statements contained in the above answer and cross petition, and from such knowledge and information and belief, I say that the statements therein contained are true as I verily believe.

E. B. EVANS.

Subscribed and sworn to before me by said E. B. Evans, this 28th day of April 1902.

JOHN NEWHOUSE,
Notary Public in and for Polk County, Iowa.

44 INTERVENOR'S EXHIBIT No. 1.

UNITED STATES LAND OFFICE,
DES MOINES, IOWA, April 21, 1897.

GEORGE W. PATTERSON

vs.

JAMES A. BEACOM, ROSCOE LYLE and A. B. BLOOM.

Case No. 106 Docket No. 10: Involving the S. W. $\frac{1}{4}$ of Sec. 3, T. 97 Range 42, Iowa.

Decision of the Register and Receiver.

The land in controversy is embraced in the Grant of May 12, 1864 to the State of Iowa, to aid in the construction of a railroad, and in the decision of the U. S. Supreme Court, rendered on the 21st day of October 1895, wherein the title to said land was declared to be in the United States. In order to carry this decision of the U. S. Supreme Court into effect, the Hon. Commissioner of the General Land Office, on the 18th day of November 1895, promulgated instructions to the Register and Receiver (which instructions were approved by the Secretary of the Interior) for the restoration of this tract of land, among others, to the public domain.

Under these instructions notice was published for six weeks commencing on the 29th day of November 1895, in the Sheldon Eagle, a

newspaper published in Sheldon O'Brien County, Iowa, wherein this land with other lands was restored to entry on the 27th day of February 1896.

Under the instructions and publications all parties claiming any portion of the land under the Act of March, 3, 1887, were required to come forward within ninety days after the date of the first publication of the restoration and file their claim and publish their notice of intention to make proof in support of their claim.

On the 17th day of January 1896 W. P. Jewett, of St. Paul, Minn., as attorney for George W. Patterson, filed his application claiming the SW $\frac{1}{4}$ of Sec. 3, T. 97, R. 42, under the Act of March 3, 1887.

On the 21st day of January 1896 D. A. W. Perkins, of Sheldon, Iowa, as attorney for Abraham B. Bloom, filed his application claiming the same tract of land under said Act.

On the same day, Messrs. King & Stearns, of Primghar, Iowa, as attorneys for James A. Beacom, filed his application claiming the said tract of land under said act.

45 And on the 23rd day of February, 1896, the application of Roscoe Lyle was filed, claiming the SW $\frac{1}{4}$ of Sec. 3, T. 97, R. 42, under the Act of March 3, 1887.

On the 27th day of February 1896, the following persons made application to enter the land in controversy as a homestead.

Louis Hoffman, Des Moines, Iowa, filed at.....	9:06 $\frac{1}{2}$ A. M.
Louis Brightwell, Greenford, Ohio.....	9:18 $\frac{3}{4}$
Joseph Louis Cain, Cummings, Iowa.....	9:50 $\frac{3}{4}$
Nels Swanson, Colfax, Iowa.....	10:25 $\frac{3}{4}$
George Swalve, George, Iowa.....	11:11 $\frac{1}{2}$
Seward F. Allen, Des Moines, Iowa.....	11:49

Roscoe Lyle, Sheldon Iowa, filed his application March 23, 1896.

A hearing was ordered between the parties to be held before the Register and Receiver of the Land Office at Des Moines, Iowa, on the 12th day of May 1896, and notice of the intention of the parties claiming under the Act of March 3, 1887 to make proof in support of their claims was published in the Sheldon Eagle for six weeks. Notice of the hearing was served by registered mail on all parties in interest on the 9th day of April 1896, and posted in the [the] U. S. Land Office for a period of thirty days prior to the date set for the hearing.

On the 12th day of May 1896, the case came on for trial and owing to other cases on trial, was passed until the following day at which time the case was called for hearing.

George W. Patterson, appeared in person and by his attorney W. P. Jewett, and O. M. Barrett.

James A. Beacom appeared in person and by his attorney J. F. Conrad.

Abraham B. Bloom, appeared in person and by his attorney H. H. Griffith.

Louis Hoffman appeared in person and by his attorney A. P. Lowery.

Roscoe Lyle, appeared in person and by his attorneys King & Stearns.

The evidence of all parties was submitted and the testimony closed. On the 4th day of March 1897, notice of default was served by Registered mail on Louis Brightwell, Joseph L. Cain, Nels Swanson, George Swale, and Seward F. Allen, No motion to set aside default having been filed by either of said parties, the case is closed as to them.

The evidence submitted on behalf of the purchasing claimant Patterson, shows that on the 21st day of June 1887, one J. H. Pasco, entered into a written agreement with the Sioux City & St. Paul R. R. Company to purchase the SW $\frac{1}{4}$ less one acre in the SW corner in Sec. 3, T. 97, R. 42, \$80 was paid on the contract and by the terms of the contract on the 1st day of January 1888 a payment of \$167 would become due, and on the 1st day of January 1889 a payment of \$357.40 would become due. The other deferred payments were to be paid on the first day of January each year until the full purchase price of \$2,146.50 was paid. There was no further payment made on the contract before the present claimant purchased it, which was on the 17th day of July 1889, The oral testimony of Mr. Patterson shows that after he purchased the land he made certain other payments, aggregating \$600. The copy of the contract assigned to Patterson fails to show the [the] receipt of any payments after the \$480 payment made at the date of the contract. The cross examination of Patterson shows that he had a general knowledge of the condition of this land as well as other lands in O'Brien County, claimed by the Sioux City & St. Paul R. R. Company. While he does [—] say that he knew at the time he bought the contract that the petition of the so-called squatters of O'Brien County had been filed in the Interior Department, asking that the land be reclaimed by the Government, yet he does not deny that he knew it at that time, admitting that he supposes he knew it about the time it was filed. He also states that he knew of the suit brought before Judge Shiras in the Federal Court affecting the title to this land.

Taking these facts into consideration together with the date Mr. Patterson bought the land and the further fact that he bought without any examination whatever into the question of title, we are of the opinion that when he entered into the agreement and took the assignment of the contract, he was fully aware of the questions affecting the title of the land, and that the transaction was speculative and was not entered into with the belief that the R. R. Company had good authority to sell the land. We do not believe that the transaction bears the elements of good faith contemplated under the 4th section of the Act of March 3, 1887 and Patterson's application under said act is hereby dismissed and rejected.

James A. Beacom filed application under Act of March 3, 1887 but the evidence submitted on his behalf fails in any manner to support his claim under said Act, and his said application is hereby rejected.

On April 12, 1896, James A. Beacom filed homestead application for the land in controversy, and the evidence submitted in his behalf shows that in October 1895, he moved on the land and was residing thereon on the 27th day of February 1896, when the land was restored to entry; that he continued his residence thereon up to the time of the beginning of said case. This would give him preference right of entry were it not for the fact that he has exhausted his homestead right. In his cross examination he testified that in 1893 he made homestead entry No. 5056 in Devil Lake District Dakota.

So far as the records in this case is concerned, that entry has never been cancelled. For these reasons his homestead application is hereby rejected.

The evidence submitted in behalf of Roscoe Lyle shows that on the 22nd day of October 1895, he drove a covered wagon on the land in controversy, stayed in the wagon over night, built a small house the next day, did some plowing in the afternoon of that day, and on the next day his house was moved off the land by Beacom, and other parties assisting him. The next day he went over to the land to move the house back but was prevented from doing so by the Beacoms. He had no further connection with the land until the 23d day of March, 1896, when he filed his homestead application. There is no evidence tending to support his claim under the Act of March 3, 1887 and his application under said act is hereby rejected.

The testimony offered on behalf of A. B. Bloom, shows that in the fall of 1875 or 1876, he did some breaking on the land, and he claims to have been in possession of a portion of the land from that time up to the present time. He has never established a residence on the land and his evidence failing in every particular to substantiate his application under the Act of March 3, 1887, said application is hereby rejected.

It would seem from the foregoing that on the 27th day of February A. D. 1896, the SW $\frac{1}{4}$ of Sec. 3, T. 97, R. 42, was vacant Government land and that no person had a legal valid claim to said land. On that day Louis Hoffman filed the first legal application for said land and his application is hereby approved and should this decision become final his homestead entry will be allowed.

Each and every of the homestead applications filed for this said land except that of Louis Hoffman are hereby rejected, and the parties are hereby notified of this decision and furnished with a copy of the same and are notified of their right to appeal to the Hon. Commissioner within thirty days.

(Signed)

EDWARD B. EVANS, *Register.*

WILLIAM H. TURBETT, *Receiver.*

(Endorsed on Back of Foregoing Answer and Cross Bill is the following:)

"AT CHAMBERS, April 29, 1902.

"Leave granted to Louis Hoffman, to intervene in suit for Roscoe Lyle vs. G. M. Patterson et al., pending in U. S. Circuit Court, at Sioux City Iowa, and to file answer forthwith in said case.

O. P. SHIRAS, *Judge.*"

Endorsed: No. 210 Equity; Roscoe Lyle vs. G. M. Patterson et al.; Petition of Intervention, and answer of Louis Hoffman; Filed May 5, 1902. A. J. Van Duzee, Clerk. By J. H. Bolton, Deputy.

And on the 2nd day of October 1905 there was filed in the office of the Clerk of said Court in this cause, an Answer to Bill of Complaint of Roscoe Lyle, and Answer to Petition of Intervention and Cross Bill of S. Hoffman,—which is in words and figures following, to-wit:

In the Circuit Court of the United States, Northern District of Iowa,
Western Division.

ROSCOE LYLE, Complainant,

vs.

GEO. W. PATTERSON, T. H. SMITH, W. M. SMITH, and THOMAS BEACOM, Defendants, and S. HOFFMAN, Intervenor.

Answer to Bill of Complaint of Roscoe Lyle, and Answer to Petition of Intervention and Cross Bill of S. Hoffman.

The defendants, all of them, for answer to the bill of Complaint of Roscoe Lyle and Petition of Intervention and Cross Bill of S. Hoffman, state;

Par. 1. These defendants, now and at all times hereafter, saving and reserving to themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint and Intervenor's petition of intervention and cross bill contained, for answer thereto or unto so much and to such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants answering said:

49 Par. —. The defendants deny each and every allegation in the complainant- said petition and said petition of intervention and cross bill contained, except as hereinafter admitted to be true.

Par. 3. That defendants admit the allegations of paragraph one of complainant's said bill.

Par. 4. Defendants deny Par. 2, of said bill of complaint except as to the residence of the defendant; and further answering said paragraph state;

That the said railroad company had not received more land than it had earned, and that the land in controversy had in fact been earned by said railroad company, and in accordance with the terms of the Act of Congress of May 12, 1864. that the purchase of the premises in controversy by the defendants Smith and Smith from the defendants Patterson, and by the defendant Beacom from the said defendants Smith and Smith, were in absolute good faith, for a full and fair consideration, and without any notice, either actual or constructive, that the complainant herein, or the intervenor

herein had or claimed any right, title or interest in or to the premises in controversy; and that the defendant Beacom is now the absolute and unqualified owner in fee simple, and for a full and valuable consideration, of the land in controversy.

Par. 5. Defendants admit the allegations of Par. 3 of complainant's said bill of complaint, and say that defendant Beacom holds his title to said premises by virtue of a warranty deed from the defendants Smith and Smith, a more particular description of the derivation of his title is hereinafter set forth in compliance with complainant's request, the defendants attached hereto, as exhibit "3" a copy of the contract upon which the defendant Patterson was awarded the land in controversy.

Par. 5½. The defendants admit that the legal questions presented herein involve the construction of the laws and special grants of the United States;

Par. 6. The defendants admit that the value of the land here involved is \$10,000 and admit that the said land in controversy is correctly described as the South West quarter (SW ¼) of section Three (3) township ninety seven (97) North of Range forty-two (42) County of O'Brien and State of Iowa.

Par. 7. Defendants admit that the Congress of the United States made grants of lands under an Act approved May 12, 1864, 50 the provisions of which Act are set out in paragraph three of complainant's said bill.

Par. 8. The defendants admit and aver that the Sioux City & St. Paul Railroad Company is a corporation and was duly organized on or about the 1st day of December, A. D. 1865, under the laws of the State of Iowa with its principal place of business at Sioux City in said State.

Par. 9. Defendants allege and aver that the Congress of the United States by the said Act of May 12, 1864, referred to in complainant's bill, and which was approved on May 12, 1864, provided for the grant of land to the State of Iowa, for the purpose of aiding in the construction of a railroad to Sioux City in said state to the south line of the State of Minnesota, upon the terms and conditions in said Act contained.

Par. 10. Defendants further answering allege and aver that the legislature of the State of Iowa, by an Act entitled "An Act to accept the grant and carry into effect the trust conferred upon the State of Iowa by an Act of Congress entitled 'An Act for a grant of land to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said state,' approved April 3, 1866", accepted said grant of lands so made by Congress, designated the Sioux City & St. Paul Railroad Company, the corporation hereinbefore referred to in this answer, as the beneficiary of said grant upon the terms and conditions of said grant.

Par. 11. That the legislature of the State of Iowa, by an Act entitled 'An Act to accept the grant of lands to the State of Iowa' made by the Act of Congress May 12, 1864, and to carry out the provisions of said Act entitled "An Act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction

of a railroad in said State", approved April 20, 1866, repeated its acceptance of the grant of lands so made by the Act of Congress and provided the manner in which said lands should be held and conveyed, and that said last named Act was afterwards amended by an Act approved on the 24th day of March, 1868, by correcting a clerical error therein.

Par. 12. That within the six months after the passage of said Acts referred to in paragraph nine, to-wit; on the 19th day of September, 1866, the said Sioux City & St. Paul Railroad Company by resolution of its Board of Directors, duly accepted the provisions of said Act of the General Assembly of the State of Iowa, approved April 3, 1866, and on September 25, 1866, filed in the office of the Secretary of the State of Iowa its written acceptance of the aforesaid grant of Congress, and of the several acts of the Legislature of the State of Iowa, referred to in the foregoing paragraphs of this answer.

Par. 13. That on the 27th day of September, 1866, the said Sioux City & St. Paul Railroad Company commenced the location of its line of railroad at Sioux City, Iowa, and between that time and the 4th day of October of that year it definitely located its line of road by surveying and taking out said line on the face of the earth, from Sioux City to the south line of the State of Minnesota, at a point selected by the said company for that purpose between the Big Sioux and the West Fork of the Des Moines River, being a point in Range forty, about equi distant, from said streams, and being the point of connection on the south line of the State of Minnesota where the land grant railroad from St. Paul and Minneapolis, provided for in the Act of Congress of March 3, 1857, and of May 12, 1864, intersected said state line, and forming a continuous line of said road, as was contemplated and designated by the said Acts of Congress; and on or about the 10th day of July, 1867, the said railroad company filed a map showing the route or location of said road in the office of the Governor of the State of Iowa, and also in the office of the Secretary of the State of Iowa, and immediately after the filing of said map with the said Governor and the said Secretary of State, aforesaid, the said Governor affixed his official signature thereto and filed, or caused to be filed said map in the office of the Secretary of the Interior of the United States, which said line of location, as shown by the said map so filed is correctly shown on the map hereto attached, marked Exhibit 1, whereupon said line of location is designated by heavy red lines marked "Located Line Sioux City & St. Paul R. R. Co."; which said map is made a part hereof;

Par. 14. That the Secretary of the Interior on the 16th day of July, 1867, accepted said map of definite location as the basis for the adjustment of the land grant made to the State of Iowa to aid in the construction of said line of road by said Act of Congress approved May 12, 1864, and transmitted said map to the Commissioner of the General Land Office, with instructions to direct the local land officers to withdraw the lands so granted to the State of

Iowa from sale or other disposal, which acceptance and instructions of the Secretary of the Interior were in writing.

Par. 15. That on the 26th day of August, 1867, the said Commissioner of the General Land Office of the United States acknowledged the filing of said map as being in accordance with the said Act of Congress approved May 12, 1864, and by an order directed to the Register and Receiver of the Land Office at Sioux
52 City, Iowa, withdrew from sale or disposal all of the odd numbered sections within the limits of twenty miles on each side of said lines, as shown and located on said maps, as aforesaid, and reserved and selected the same as land inuring to the State of Iowa, for the use and benefit of the Sioux City & St. Paul Railroad Company, as aforesaid, and directed that the even numbered sections within said limits to be held for sale and disposal only at the double minimum price for said lands; that the said order was accompanied by a map showing the ten and twenty mile limits of said land, which show that the land hereinbefore described in paragraph 6 of this answer, is within the 10 mile limit, as shown on the said map, and the land in controversy is, and at all times has been, within the ten mile limit of the line of railway as so located and as actually constructed as hereinafter detailed, which said ten-mile limits and twenty mile limits are correctly shown on said map, the said ten mile limits being indicated by heavy red lines marked "Ten miles limits, Sioux City & St. Paul R. R.", and the said twenty mile limits being indicated by heavy blue lines marked "Twenty miles limits, Sioux City & St. Paul Railroad."

Par. 16. That in the year 1872, the Sioux City & St. Paul Railroad Company commenced the construction of its line of road, and prior to the first day of October in said year had constructed in Sioux City one and one tenths miles of main track and three quarters of a mile of said track for its use there, and during the same time commencing with the point of connection selected, as aforesaid, on the south line of the State of Minnesota, and forming a continuous line with the railroad there constructed, and upon the line so staked out, marked and platted as hereinbefore alleged; and constructed as a first class road and in full compliance with the Acts of Congress and the Acts of the Legislature of the State of Iowa, aforesaid, in a southwesterly direction prior to the 5th day of June, 1872, ten miles of road, and in like manner prior to June 29, 1872, ten miles further; and in like manner prior to July 15, 1872; ten miles further; and in like manner prior to August 10, 1872, ten miles further; and in like manner prior to September 10, 1872, ten miles further; and in like manner prior to September 25, 1872, six and one fourth miles further, to and into the village of LeMars, State of Iowa, and in connection with the Iowa Falls, & Sioux City Railroad, then and still being run and operated by the Illinois Central Railroad Company, over which said line said Sioux City & St. Paul Railroad Company acquired the right to run and operate to Sioux City, Iowa, a distance of twenty four (24) miles, and since which said time said line of railroad as constructed

53 by said Sioux City & St. Paul Railroad Company has continued to be run and operated in connection with said line in the State of Minnesota, and forming a continuous line of railroad from St. Paul to Sioux City.

Par. 17. That the land hereinbefore described, and being the lands in controversy, in this action, lies within the ten mile limit of the line of railroad so constructed and put in operation by the said Sioux City & St. Paul Railroad Company, and the said railroad was in 1872, as aforesaid, constructed and completed for many miles distant, both north and south of the said land in controversy, and by reason of the construction of said road, in compliance with the Act of Congress aforesaid by said railroad company, the said railroad company did in fact earn, and was entitled to the said land in controversy, the same being within the ten mile limit of said railroad, and being unoccupied, open and vacant lands free from all pre-emption homestead, tree claims or other rights [or] any and all persons whomsoever at the time of the making and filing of the said plat of location, and the approval thereof as provided by the said Acts of Congress.

Par. 18. That on the 26th day of July 1872, Cyrus C. Carpenter, the then Governor of the State of Iowa, certified to the [to the] Secretary of the Interior of the United States, that two sections of railroad had been constructed from the south line of the State of Minnesota, southerly in the direction of Sioux City, through the counties of Osceola, and O'Brien in the State of Iowa, in accordance with the provisions of the Act of Congress aforesaid, approved May 12, 1864, and that each of said sections comprised ten consecutive miles of road, in all twenty miles, upon which the cars were then running, and the same was constructed as aforesaid and completed in good substantially manner in all respects as a first class railroad, and on the 10th day of August 1872, the said Governor certified to the Secretary of the Interior in like manner, that another section of ten consecutive miles was in like manner [com-] 4th day of February 1873, the said Governor certified to the Secretary of the Interior, in like form and manner, the construction and completion of two more sections of said railroad, making in all fifty (50) miles so certified, and the said Sioux City & St. Paul Railroad Company thereupon became, and was entitled to have hold, own and possess one hundred (100) sections of land, granted as aforesaid, for each of said ten mile sections so constructed and certified as aforesaid, making in the aggregate five hundred (500) sections of land for the said five mile sections, or 320,000 acres therefor; and was entitled to, had earned and became equitably vested with the title to all the lands within the ten mile 54 limits of said road as far as constructed, including the land in controversy; also all of said lands so vested in said company which were within the twenty mile limits and which were so certified, approved, and patented for the use of said company.

Par. 19. That on the 23rd day of February 1873, the said Sioux City & St. Paul Railroad Company by its authorized agent, selected the SW quarter ($\frac{1}{4}$) of section 3, township 97, north, of range 42,

west of the 5th P. M. O'Brien County, Iowa, being the tract of land in controversy herein, with other lands as and for part of the lands inuring to the said company under the said Act of Congress of May 12, 1864, and filed a written list of said selection with the Register and Receiver of the United States Land Office at Sioux City, Iowa, which said officers, on the 5th of March 1873, allowed and approved the filing of said list and certified the same as being within the ten mile limits of said grant, and as being free and clear from homestead, pre-emption or other valid claims, which said list was duly transmitted to the Commissioner of the General Land Office at Washington. That said Commissioner duly approved the selection of said land by said railroad company, and transmitting to the Secretary of the Interior an list embracing said tract, and the Secretary of the Interior duly approved the said selection and certification, and caused two copies of said list to be filed with said Register and Receiver at Sioux City, and with the Governor of the State of Iowa. And on the 17th day of June 1873, the Secretary of the Interior of the United States caused to be issued to the State of Iowa, for the use and benefit of the said Sioux City & St. Paul Railroad Company, a patent embracing the land described in this paragraph, and being the land in controversy herein, as and for part of the lands inuring to Company, a patent embracing the land described in this paragraph, and being the land in controversy herein, as and for part of the lands inuring to the said State of Iowa, and to said Sioux City & St. Paul Railroad Company, under the Act of Congress of May 12, 1864, aforesaid.

Par. 20. That the General Assembly of the State of Iowa, by an Act entitled "An Act authorizing and directing the Governor to certify to the Sioux City & St. Paul Railroad Company certain lands named therein," approved March 13, 1874, authorizing and directing the Governor of the State of Iowa to certify to said Sioux City & St. Paul Railroad Company, all the lands held by the State of Iowa in trust for the benefit of said Railroad Company, and the land herein described as the land in controversy was a part of the lands then held by the State of Iowa under said patent, in trust,

55 for the use and benefit of the Sioux City & St. Paul Railroad Company, and was a part of the lands so directed to be conveyed to the said company, and was a part of the lands which in fact had been earned.

Par. 21. That the said Sioux -- & St. Paul Railroad Company earned and was entitled to receive, have, own, hold and possess, all alternate odd sections of land within the ten mile limits on the line of railroad as so mapped and constructed, and which were coterminal with the sections of road which had been completed, and which were not held by valid pre-emption, homestead or other claims which operated to prevent the said alternate section from passing under the said grant, and the said railroad company had in fact earned the lands in controversy under and by virtue of the said Acts of Congress and of the General Assembly of the State of Iowa, and in full compliance by said railroad company with the terms

and conditions thereof, and of the construction of said ten mile sections of said road as aforesaid.

Par. 22. Defendants admit that the 19th General Assembly of the State of Iowa passed an Act approved March 16, 1882, relating to the land grant of the Sioux — & St. Paul Railroad Company, being Chapter 107 of the laws of 1882 of said State, which is correctly set out in complainant's bill of complaint, but defendants allege and aver that said Act in no manner referred to or affected the land in controversy. That the said Act in terms refers to such lands, and such lands only, as had not been earned by the said Sioux City & St. Paul Railroad Company, and the land in controversy was not specifically described, named or mentioned therein.

Par. 23. Defendants admit that the General Assembly of the State of Iowa passed a further Act relating to the Sioux City & St. Paul Railroad Company land grant approved on the 27th day of March 1884, being Chapter 71 of the laws of 1884, and the same is correctly set out in complainant's said bill, but the defendant alleges and avers that said Act in no manner affected or embraced the land in controversy herein, the said Act referring in terms to such lands only as the said Sioux City & St. Paul Railroad Company had not earned and the land in controversy was not particularly described or mentioned therein.

Par. 24. That on the 7th day of April 1879, the Chicago, Milwaukee & St. Paul Railway Company commenced, in the Supreme Court of the United States for the District of Iowa, an action against the Sioux City & St. Paul Railroad Company, to recover certain lands claimed by said Sioux City & St. Paul Railroad Company as a part of its grant which action embraced the land in controversy, in which action a decree was entered on May 21, 1886, awarding the tract in controversy to the said Sioux City & St. Paul Railroad Company.

Par. 25. That under and pursuant to the decree referred to in the last preceding paragraph, commissioners were duly appointed in said court to partition the land held jointly by said railroad companies, which commissioners did thereafter, pursuant to said order set out in severalty to the said Sioux City & St. Paul Railroad Company, all of the land in controversy in this action as a part of the land earned by the said Sioux City & St. Paul Railroad Company, which report was thereafter, on the 28th day of October 1886, confirmed by said Court.

Par. 26. That the Secretary of the Interior having before him the question of the quantity of lands to which the said Sioux City & St. Paul Railroad Company was entitled, by reason of the construction of the said five sections of ten miles each, as hereinbefore set forth, and upon the application of certain settlers occupying certain lands claimed by the company in the county of O'Brien did, on the 26th day of July 1877, render a decision therein, and did hold that the grant to said railroad company was then unadjusted, and that in any event the said railroad company was entitled to at least 4,101.86 acres, out of the 21,692.18 acres as earned lands under the grant, and directed the Commissioner of the General Land

Office to make an adjustment of the grant in accordance with the views set forth in said decision, which decision is officially reported on pages 54 to 71 inclusive Vol. 6 of the land Decisions of the Department of the Interior, which is made a part hereof as fully as if set forth herein.

Par. 27. That the Congress of the United States, by an Act entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands and other purposes", approved March 3, 1887 (24 Stat. 556) did direct and authorize the Secretary of the Interior to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad Land Grants made by Congress to aid in the construction of railroads, and theretofore unadjusted.

Par. 28. That [*this*] defendants admit at the time of the purchase of said land from the railroad company, in good faith believed that the said lands had been earned by said railroad company, because the same were within the ten mile limits of the road as actually constructed, and the said railroad had been constructed to a point south of the point of beginning at the Minnesota State line to LeMars Iowa, which was many miles beyond the [lands] in controversy, and because the Governor of Iowa had certified the completion of said road beyond said land, and the United States thereupon patented said land to the State of Iowa, for the use and benefit of said railroad company and its assigns forever, in all respects as required by the grant in order to vest title in said company and divest the title of the United States, and the said several Acts of the Legislature of the State of Iowa, which were public lands, only undertook to forfeit, resume and reconvey to the United States Government such lands, and such lands only, as the said railroad company had not in fact earned. That as a matter of fact the said land in controversy was in fact earned by the said railroad company, it having fully complied with the terms of the grant to the extent of the five ten mile sections of road which it had constructed. That the said defendant did not know, nor had any reason to know, that the said railroad company had received any other or different lands in lieu of any of the odd-numbered sections of land within the ten-mile limit and co-terminus with the line of road so completed, and he knew that the lands had not been previously occupied by anyone, and that there were no outstanding homestead or preemption claims, or any claims whatsoever, in and to said lands;—and knew, that said lands had been so certified as earned and had been patented as aforesaid for and as the property of said company, and its assigns forever; and neither of the Acts of Congress looking to the adjustment or forfeiture of the land on the part of the railroad company, or the Acts of the General Assembly of the State of Iowa, specifically describe the lands which were in fact sought to be reclaimed, forfeited or adjusted; nor did defendants have any reason to know, nor did they know that the lands in controversy were [*were*] of the lands so sought to be reclaimed. That the Act of Congress of May 12, 1864, in terms grants to the

State of Iowa, for the use and benefit of the railroad company every alternate section of land designated by odd numbers for ten sections in width on each side of the railroad, but it is provided in case it shall appear that the United States have, when the lines or routes of the road definitely located, sold any section or part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States, for any purpose whatsoever, then the Secretary of the Interior to cause to be selected from the public lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections 58 designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved or otherwise appropriated or to which the right of homestead settlement or pre-emption has attached which lands thus indicated by odd numbers and sections, by the Direction of the Secretary of the Interior, shall be held by the State of Iowa for the uses and purposes aforesaid provided that the lands so selected shall be located not more than twenty miles from the lines of said road.

Par. 29. Under the terms of said grant the defendant and said J. H. Pasco understood and believed that all of the odd sections within the ten mile limit, and which were not excluded from the grant by reason of adverse claims, at once became earned as soon as each section of said road was completed. And at the time of the said purchase from the said railroad company, the defendants and J. H. Pasco believed that the lands had been so earned, had not been forfeited, nor the title thereof reverted in the United States, and they in good faith believed and said Pasco believed, he was acquiring absolute title to said premises under and by virtue of the purchase thereof under said contracts from the said railroad company.

Par. 30. That the said defendants at the time of the purchase of land from the said railroad company, under said contract, was a citizen of the United States, duly qualified under the laws of the United States, and the State of Iowa to contract for purchase and to hold title to lands in the State of Iowa, and therefore was entitled, as such citizen, and duly qualified to enter said lands under the grant of the United States, if he should so desire or elect to do. That these defendants have not sold, conveyed or contracted to sell or convey the land so purchased from the said railroad company, and in controversy herein except as hereinafter shown.

Par. 31. That on or about the 4th day of October 1889, an action was commenced by the United States, as plaintiff, against the Sioux City & St. Paul Railroad Company, and other defendants, in the Circuit Court of the United States in and for the Northern District of Iowa, Western Division, to quiet title in the United States as against said defendants named in said action, to the land in controversy with other lands, but to which action this defendant was not a party.

Par. 32. That on October 20, 1890 a decision was rendered in said action, referred to in the last preceding paragraph, as reported

in Vol. 43 of the Fed. Rep., page 617 which is hereby referred to and made a part hereof; and thereafter and on December 18 59 1890, a judgment and decree was entered herein quieting title in the United States to the lands described in said Bill of Complaint, referred to in the past preceding paragraph, from which decree and judgment the said Sioux City & St. Paul Railroad Company perfected an appeal to the Supreme Court of the United States.

Par. 33. That on October 21, 1895, the Supreme Court of the United States confirmed the judgment and decree referred to in the last preceding paragraph, and thereafter and on November 18, 1895, the Commissioner of the General Land Office, by a letter approved by the Secretary of the Interior directed the Register and Receiver of the United States Land Office at Des Moines Iowa, to give notice of the restoration to public entry of the lands embraced in said decree on a date to be fixed ninety days after the publication of such notice which notice should include a notice to all persons claiming as purchasers from the Sioux City & St. Paul Railroad Company, of any of the lands the title to which was quieted as aforesaid, to come within the ninety days and file notice of their intention to make proof of their purchase under the provisions of said Act of Congress of March 3, 1887. That Register and Receiver duly fixed the 27th day of February 1896, as the date upon which said land should be restored, and this defendant Patterson, as assignee and purchaser from J. H. Pasco, on the — day of Jan'y, 1896, and within the 90 days limit, as aforesaid, did file with the Register and Receiver his written notice and intention to make proof of defendant's purchase of the tract in controversy. Under said Act of March 3, 1887, said officers caused said notice to be published, and fixed the 13 day of May 1896 as the date upon which the proofs of said purchase would be heard, which notice is referred to in the bill of complaint herein. The complainant in person and by counsel and defendant in person and by counsel and intervenor, duly appeared on said date before said Land Officers and made proof of their respective claims, and the said land Officer did thereafter, and on the 13th day of May 1896, render a decision awarding the land to the intervenor.

Par. 34. That the said complainant and defendant Patterson thereby perfected their appeals from said decision of the Register and Receiver to the Commissioner of the General Land Office, which officer on the 28th day of August 1899, reversed the decision of the Register and Receiver and awarded the said tract to one James Beacom.

Par. 35. That complainant, intervenor and defendant Patterson thereupon duly perfected an appeal from said decision of the 60 Commissioner to the Secretary of the Interior, which officer, by a decision rendered on the 21st day of April 1900, reversed the decision of the Commissioner awarding the land to the said Beacom, and ordered confirmatory patent issued to defendant, Geo. W. Patterson, as a good faith purchaser under the provisions of the Act of March 3, 1887.

Par. 36. That thereafter, pursuant to and in conformity with said decision the patent of the United States bearing date of March 23, 1901 was duly issued to the defendant Patterson as a good faith purchaser under the act of March 3, 1887.

Par. 37. That since the date of the issuing of said patent, these defendants have been in the actual, open and notorious possession of said land, cultivating and improving the same, and the said land has at all times since been taxed by the State of Iowa, and these defendants have made payment of a large amount of taxes thereon, and all of said Acts of possession, occupation, cultivation, and payment of taxes, have been in the good faith belief, that these defendants were the absolute owners of the said land, and has good absolute, fee simple title under and by virtue of the contract of purchase and the proceedings in the Land Department of the United States, and hereinbefore detailed and described, and the conveyances hereinafter recited.

Par. 38. That under the terms and provisions of the Act of March 3, 1887, under the provisions of which this complainant and intervenor are seeking to maintain this action, and have cancelled and set aside the patent issued to the defendant, Patterson, and his claimed right of homestead protected, preference was given to the right to prove up and obtain patent to said land, first to bona fide purchasers from the railroad company, and second, to actual settlers residing thereon, and lastly to those first filing claims to homestead thereon on the date that same was open for such entry. That complainant and intervenor herein made their applications to homestead said land under the provisions of said section, which provision gave priority in favor of actual settlers residing on the land, as shown by the allegations of complainant's bill and intervenor's petition and cross bill, but these defendants aver that the said complainant nor intervenor never actually resided on said land, nor made settlement thereon, nor were they entitled at any time, or are they now entitled to homestead said land under the provisions of said act. That notwithstanding the fact that the said complainant, nor intervenor herein, had never resided upon, nor were they an actual settler upon said land, yet they in their applications to enter

61 said land falsely averred and claimed to the Land Department, that they were and had been actual settlers thereon, and the finding of the said Department of the Interior against the said complainant and intervenor is a finding of fact which is conclusive upon the said complainant herein and intervenor herein, that they were not entitled to enter said land as homesteaders, nor either of them, under the provisions of the Act of March 3, 1887. That these defendants aver that this complainant and intervenor have at no time resided upon and become actual settlers upon said land, nor have they in any way, manner or form complied with the provisions of the homestead laws of the United States, nor have they acquired, or either of them, any right, title, interest or claim in and to said land by actually settling thereon or otherwise, nor have they any such title, interest or claim, or right of possession or title to said land that they or either of them, can attack or maintain this

action, cancel or set aside or avoid the said patent so issued and delivered to the defendant Patterson by the Department of the Interior. The defendants further say and state that the rights under which the defendant Patterson claimed the right to procure a patent and did procure a patent to said land, were initiated and created long before the said complainant or intervenor ever attempted to obtain any title or right to said land under the Homestead Laws of the United States, either by actual settlement or otherwise, and the rights under which defendant obtained title under a patent, began and were initiated by the said Pasco in 1887, when he actually settled and resided upon said land and continued in possession thereof to the time the possession was voluntarily turned over and surrendered to the defendant Patterson, and under and by virtue of the contract of purchase executed by the Sioux City & St. Paul Railroad Company, and which claim and rights so initiated and continued finally culminated through proceedings in the Department of the Interior of the United States in the perfecting of defendant's title by the patent hereinbefore referred to, which was duly granted to the defendant Patterson.

And all that this complainant or intervenor has done toward acquiring any right, title or interest in and to said land, or acquiring any right, title or interest upon which they base the right to question the validity of the patent to defendant, is the fact that in February, 1896, they deposited with the Register and Receiver at Des Moines Iowa each an application to enter the land under the homestead laws of the United States and under the Act of March 3, 1887, and tendered to said Register and Receiver the necessary fees therefor, but which said applications and money was
62 rejected by said Department, and the complainant and intervenor have never paid any entry fee, nor have their applications, or either of them ever been received and their whole right and basis their whole action is based upon the mere fact that they made an attempt as aforesaid to enter the land under the Homestead laws of the United States and which has at all times up to the present time been rejected by the proper department of the Government of the United States.

Par. 39. That from and after the rendition of the opinion and decision of the Secretary of the Interior in the proceedings of the Land Department involving the land in controversy and the right to enter the same by this defendants Patterson under the contract of purchase from the railroad company, and by the complainant and intervenor under their claimed homestead application, in which the Secretary of the Interior held that the defendant Patterson was entitled to a patent to said land under the Act of March 3, 1887, up to the time of the commencement of this action, the complainant and intervenor herein both acquiesced in said decision of the said Department of the Interior, and made no further claim to said land from these defendants but knowingly permitted these defendants to occupy and improve the said premises and pay the taxes thereon from year to year, knowing that these defendants were doing so in good faith, believing that they had absolute fee simple title to said

premises and believing that they, said complainant and intervenor, were making no further claim of right, title or interest in and to said land. That the complainant and the intervenor since said decision was rendered at all times knew that these defendants were so occupying improving and cultivating said land and paying taxes thereon from year to year and knowing these facts, failed neglected and omitted to assert any title thereto or to bring any action to cancel or set aside the patent issued, and these defendants allege that by reason of the silence of the said complainant and the intervenor, and their failure to assert any title to said premises, or to bring any action questioning the rights of these defendants, or the validity of the said patent, and by reason of such laches, they are barred and estopped from maintaining this action in equity.

And these defendants further aver that from and after the said decision of the Secretary of the Interior as aforesaid, this complainant, nor the intervenor, have made no effort whatsoever to perfect their claimed homestead rights, or to enter said land as a homestead, but have in fact, and had for a long time prior to the commencement of this action, abandoned all rights under their pretended homestead applications, and took no steps to protect their said claims or homestead rights, from the rendition of the decision of the Secretary of the Interior until the commencement of this action.

Par. 40. Defendants further answering allege, that after the passage of the said Act of Congress, of May 12, 1864, the United States Government at all times prior to the institution of the action brought by it against the Sioux City & St. Paul Railroad Company, as hereinbefore alleged, treated the land mentioned and described in said grant, which grant included the land in controversy in this action, as having passed under and by virtue of said grant to the said Sioux City & St. Paul Railroad Company, or to the State of Iowa for the use and benefit of said railroad company, and permitted and allowed the said railroad company to handle and sell said land and to exercise all acts of ownership over the same, such as maintaining suits in the United States Court in Partition, and otherwise against the Chicago Milwaukee & St. Paul Railway Company, causing the same to be decreed to be the land of the said Sioux City & St. Paul Railroad Company, and by commission, duly appointed by the United States Court to partition said lands between the said respective railroad companies; and allowed the said Sioux City & St. Paul Railroad Company to sell and dispose of said lands, including the land in controversy, as owner thereof, and to cause the same to be assessed for taxation in the usual manner, and as the lands of the said Sioux City & St. Paul Railroad Company, and permitted the said company and this defendant to pay taxes thereon from year to year, as the owners thereof, and during all said period and during such time, the United States Government was denying that the said lands were the lands of the said Government, and refused to receive homestead applications therefor made by various and divers individuals under the Homestead Act of the United States, and refused to recognize such applications, and at all times

refused and failed to act in harmony with the several acts of the legislature herein referred to, looking to the restoration of said lands to the United States, and failed, neglected and refused to accept such relinquishment of the State of Iowa to the United States of said lands; and all of said things the United States Government did and suffered to be done continuously and without abridgement, until it instituted the said action against the said Sioux City & St. Paul Railroad Company, as hereinbefore detailed, which was so instituted in the year 1889, and which suit was begun long after the purchase of the land in controversy by this defendant, and those through whom he claims to have acquired his interest by purchase, and which said suit resulted in the final decree of the Supreme Court of the United States in October 1895, as shown by Vol. 159

64 page 349, of the decisions of the Supreme Court, and which is hereinbefore referred to in this answer. The defendant further says that upon the passage of the Act of March 3, 1887, the Government of the United States, through whom the complainant claims title and interest in and to the real estate in controversy herein, acting through its proper officers, took action to adjust the lands granted to the State of Iowa, for the use and benefit of the Sioux City & St. Paul Railroad Company, under the Act of May 12, 1864, and in pursuance of said Act of March 3, aforesaid, began and prosecuted the action against the said railway company, as fully set forth in Pars. 34, 35 and 36 of this answer, and in the said action the United States Government, in said Court of equity, alleged, urged and maintained that the provisions of said Act of March 3, aforesaid, applied to the grant of May 12, 1864, to the State of Iowa, for the use and benefit of the Sioux City & St. Paul Railroad Co., and to the lands therein granted, and after the said final decision in said action was rendered by the Supreme Court of the United States, the said Government still insisting that the said grant of land was within the provisions of the Act of March 3, and that the said grant of May 12, aforesaid, had not been adjusted said Government, through its proper officers, placed the said lands for disposition under the provisions of said Act of March 3, and by means of the proper notice and proclamations invited all purchasers thereof, including this defendant Patterson, to appear at the time named in such section and proclamations and comply with the provisions thereof and make proper proof of purchase from the said railroad company, pay the purchase price thereof and upon compliance with its provisions, it held out and represented that said land would and should be patented and conveyed to such purchasers, of which class of purchasers the defendant Patterson was and is one.

Par. 40½. That in addition to the matters and things alleged in this answer as inducing defendant to believe in good faith that the said railroad company had earned the land in controversy and had full right and lawful authority to sell and dispose of the same, and upon which defendant relied in making purchase of said land and expending money on connection therewith, he was induced and so led to believe on account of the record title to said land as shown

by the official records in the office of the Recorder of O'Brien County, Iowa, to-wit:

The grant by the United States to the State of Iowa for the use of said Sioux City & St. Paul Railroad Company dated June 17, 1873, and recorded in original entry book at page 134.

65 United States to the State of Iowa, for the use of the Sioux City & St. Paul Railroad Company, copy of the patent dated June 17, 1873, filed for record May 12, 1887 and recorded in book 24 at page 184.

Trust deed from Sioux City & St. Paul Railroad Company to Alexander H. Rice and Elias F. Drake, trustees, to secure bond of \$2,800,000 upon the land granted to Sioux City & St. Paul Railroad Company dated August 1, 1871, filed for record May 25, 1882, in Book "B" page 12;

Sioux City & St. Paul Railroad Company to Elias F. Drake and Amherst F. Wilder, trustees, confirmation deed, made to ratify and confirm trust deed of August 1, 1871, and more fully describing the land, dated February 25, 1884, filed for record March 25, 1886 and recorded in Book "R" at page 246.

Copy of the decree in the case of Chicago Milwaukee & St. Paul Railroad Co., vs. Sioux City & St. Paul Railroad Co., et al., in United States Circuit Court, giving this land to the two roads jointly, dated March 25, 1886, filed for record May 21, 1886, and recorded in book 23 at page 197.

Report of the Commissioners P. T. Lannard, John I. Elliott and E. R. Mason, appointed by the said United States Court, partitioning this land between the two railroad companies and affirming by the Court, dated October 25, 1886, filed for record December 3, 1886, recorded in Book "T" at page 252;

Resignation of Alexander H. Rice, trustee, dated February 13, 1880 filed for record July 29, 1880 recorded in Book "E" at page 235.

That the various instruments referred to above contained a description of the land in controversy, together with other lands, granted and patented to the State of Iowa by the United States for the use of the Sioux City & St. Paul Railroad Company.

Par. 41. That under and by virtue of the defendant's said purchase of said land, and the acts of said Government, as detailed herein, and in the last preceding paragraph of this answer, this defendant Patterson, in good faith incurred great expenses in purchasing the said land from and through the railroad company, as aforesaid, in procuring Counsel to maintain his rights in the Land Department of the United States Government, in paying the expenses of contest herein, as hereinbefore set forth, and in 66 procuring his said bona fide claim to said land, through the Department of the Interior in which Department the said land was awarded to the defendant Patterson as hereinbefore alleged; and said defendant, relying upon the acts and conduct of the said Government, and his good faith purchase, hereinbefore set out, upon being awarded said land, as aforesaid, paid to the Government the full purchase price thereof, to-wit; the sum of \$400.00 cash. And caused to be paid by the said defendant to said Government as the

purchase price of said land, the full sum of \$100 (four hundred) dollars, which said money the said Government received as the consideration for the conveyance of said land to the said defendant Patterson under and by virtue of the said ~~and~~ patent, and which said money and purchase price the said Government has at all time since retained, and still retains.

PAR. 42. That the complainant and the Intervenor herein made their attempted filing on said land and by virtue of the Act of March 3, 1887, and in pursuance of the published notice and proclamation referred to in PAR. 40 herein, long after this defendant Patterson had become the purchaser of said land from the said railroad company through Paces long after the said United States had brought and maintained the said action for the courts of the United States against the said Railway Company, as aforesaid, and long after it had successfully presented the said action to final decision in the Supreme Court of the United States, as heretofore detailed, and long after the said Government had issued purchases, including the said defendant Patterson to proceed to comply with the provisions of the Act of March 3, 1887, and he, the said complainant and said Patterson claims title to said land under, by and through the said United States Government in privity therewith; that the United States Government is now estopped by reason of its act and conduct [as] as detailed in PAR. 40 and 41, and this paragraph and by reason of its acceptance and retention of the money so paid by the defendant as the purchase price thereof, from now maintaining that the defendant Patterson did not acquire title in fee simple to said land, and from questioning the validity of said patent so issued to said defendant, and from maintaining that the Act of March 3, 1887, does not apply to said grant or that the said lands and the said grant had previous to the said Act been withdrawn, and this complainant and said Patterson being a claimant of title by, through and under said government, and in privity with it, and their claims and each of them having originated subsequent to the purchase of said land from the said railroad company by said defendant, and through Paces whom he claims through, and long after the

67. said Government had proceeded under the Act of March 3, 1887 and he, the said complainant and the said Intervenor, having full knowledge at the time of making their applications to homestead said land of all the matters and things recited in PAR. 40 and 41, and in this paragraph, and of the good faith of said defendant in making said purchase and attempting to procure title to said land under the Acts of March 3, 1887, and likewise now barred and estopped from questioning the validity of the patent so issued to said defendant by the United States Government, or in any manner questioning the right, title or interest of these defendants in or to the said land, or claiming that he, the said complainant or said Intervenor is entitled to homestead said land and procure title thereof under the homestead Act of the Government of the United States.

PAR. 43. That defendants further state that the complainant and Intervenor herein has no title, right or interest whatsoever in or to

the said land upon which they or either of them in law or in equity, can or should maintain this action, or question the title of this defendants procured and created under and by virtue of the said patent issued by the Government of the United States to defendant Patterson, that this complainant and intervenor has no title, right or interest whatsoever in or to said real estate, nor have they had nor are they now or either of them possessed of said real estate and they have no interest as can or should form the basis of any action in this Court to question the title and interest of this defendants in and to said real estate, and especially as against the defendant Heacom.

Par. 44. That by the said Act of Congress approved May 12, 1864 the land in controversy with other land, was granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City Iowa, to the Minnesota State line, as hereinbefore set forth, which said grant was accepted by the State of Iowa, and conferred upon the Sioux City & St. Paul Railroad Company, by the Acts of the General Assembly, as hereinbefore more fully set forth, and said company accepted said grant and constructed a road from the distance of over fifty (50) miles as fully set forth heretofore in this answer, and the land in controversy herein was, and is, within the terms of said grant as heretofore specifically set forth, said Acts sets forth the terms and conditions, upon the happening of which the title to said land shall be transferred upon the railroad company, and it provides; "That the lands hereby granted shall be disposed of by said State, for the purposes aforesaid only and in manner following, namely: When the Governor of said State shall certify to the Secretary of the

Interior that any section of ten (10) consecutive miles of either of said roads is completed in good, substantial, and workmanlike manner as a first class railroad, then the Secretary of the Interior shall issue to the State patents for one hundred (100) sections of land for the benefit of the road having completed the ten (10) mile as aforesaid; when the Governor of said state shall certify that another section of ten (10) consecutive miles shall have been completed, as aforesaid, then the Secretary of the Interior shall issue a patent to said state in like manner for a like number; and when certificates of the completion of additional sections of ten (10) consecutive miles of either of said roads are from time to time made as aforesaid, additional sections of land shall be patented as aforesaid, or either of them are completed, when the whole of the land hereby conveyed shall be patented to the state for the uses aforesaid, and none other."

And under and by virtue of said grant and the several acts of the General Assembly of the State of Iowa, aforesaid, the said Sioux City & St. Paul Railroad Company did accept said grant and undertook to construct said road, and did accept five,—ten (10) mile sections of road as provided in said Act, and did in all respects comply with the Acts of Congress in respect to the manner of location, filing plat and map, and in construction as more fully specified in paragraphs 12, 13, 14, 15, and 16 of this

ANSWER. That the Governor of the State of Iowa, did from time to time, as each section of ten (10) consecutive miles of road was completed, certify to the Secretary of the Interior as to the fact of the completion thereof, as [it] more fully set forth in detail in Par. 16 of this answer, and the lands in controversy, with other lands, were selected, certified and approved as lands so earned by said railroad company, as is more fully set forth in Par. 19 of this answer. That in pursuance of said Act of Congress and the due certification of the Governor of the State of Iowa to the completion of the sections of said road, as aforesaid, the Secretary of the Interior, on or about June 17, 1873, duly and regularly caused to be issued and delivered to the State of Iowa, for the use and benefit of the said Sioux City & St. Paul Railroad Company, a patent to the land in controversy, with other lands, which patent recites, the said land is conveyed to the State for the use and benefit of said railroad company, a copy of which patent, omitting all descriptions of land other than the tract in controversy, is hereto annexed marked exhibit 2, and made a part hereof. That said patent in terms, after describing the tract in controversy and recital of full compliance with the Act of May 12, 1864, among other things recites; "Now, know Ye, that the United States of America, in consideration of the premises and pursuant to the said Act of Congress, have given and granted, and by these presents do give and grant unto the said state of Iowa, for the use and benefit of the Sioux City & St. Paul Railroad Company of said state and its assigns, the tracts of land selected as aforesaid, and describing in the foregoing to have and to hold the said tracts with the appurtenances unto said state for the use and benefit of said Sioux City & St. Paul Railroad Company and its assigns forever."

That by virtue of said patent and the several acts aforesaid, preceding the issuance thereof, the equitable title to said lands was in the said Sioux City & St. Paul Railroad Company, and the State of Iowa held the mere naked legal title thereto in trust for the use and benefit of said railroad company, and nothing remained to be done to vest complete fee simple title in and to said land in said company except the mere formal act of issuing a deed of conveyance thereof by the State of Iowa to said Company.

That on or about May 21, 1887, J. H. Pasco, Patterson's assignor and grantor, entered into a contract with the said Sioux City & St. Paul Railroad Company for the purchase of the lands in controversy herein at the agreed price of \$2,080.00 and paid in cash thereon the sum of \$160. That the defendant Patterson at the time of his purchase July 17, 1889, went into possession of said premises, cultivated and improved the same, paid taxes thereon, and the defendant Beacom still has and retains possession thereof.

That at the time of the purchase of said premises by defendant Patterson and likewise the other defendants at the time of their purchase as shown herein, believed that the said railroad company had earned said lands, that they knew of the conveyance of

said land from the United States to the State of Iowa for the use and benefit of said railroad company; they knew of the recitals of said patents [showin] full compliance on the part of said railroad company with the provisions of the grant of May 12, 1864, and relying thereon and believing the truth thereof, and not knowing to the contrary, bought said land in good faith and paid therefor as aforesaid. That at the time of the purchase of said land from the Railroad Company no person was in possession of said land excepting Pasco. No homestead or pre-emption claimant was asserting any title thereto or claim therein, nor did they know that said lands were subject to forfeiture, or had been forfeited, or attempted to be forfeited, or the title resumed by the United States, nor had any action brought by the United States to adjust said grant, recover said property or to declare a forfeiture thereof. That the defendants purchased said land as aforesaid for a full and valuable consideration, with full knowledge of the conveyance of said land by the Government of the United States to said State for the use and benefit of said railroad company as its property, of the fact of the recitals of said instrument of conveyance, of the construction of said road, and of other facts herein alleged, and upon which he relied in the purchase of said land; and acquired the right to said land in good faith and in the honest belief that said contract vested in him the title to said land, and that said railroad company owned the same and had earned the lands aforesaid, and in every respect complied with the provisions of said grant, and he relied upon the recitals in said patents contained as being true, and did not know to the contrary. That the complainant herein not the Intervenor, did not make application to homestead said land, nor either of them, until long after the purchase thereof by the defendant Patterson, and long after [—] had expended much money in such purchase, and in the improvement of said land, and so applied to homestead said land while the defendant Patterson was in the actual possession thereof, claiming title under his said purchase, and after the United States had parted with the title thereto under said patent. That this defendant has fully complied with the terms of said purchase, and at all times stood ready and willing to perform on his part. That while the defendant Patterson has received a patent to said land from the United States under and by virtue of the Act of March 3, 1887, he avers that he was and is entitled to said patent, and said land by virtue of the purchase thereof, as aforesaid, and the facts herein alleged. That the said Government of the United States, by reason of the facts herein alleged is, and at all times since the purchase of said land has been estopped from denying that said lands were earned by said railroad company, and that the title thereto had passed to the said company, and from claiming or maintaining that the said lands reverted to the United States, or that these defendants have no title or interest therein; and by reason of the facts alleged in this answer, and by reason of the receipt and [rentention] by the Government of these defendant's money in payment of the full purchase price

thereof, it is estopped from questioning the validity of the patent issued to the defendant Patterson or the regularity of the proceeding under which the same was obtained that the complainant herein and the said intervenor claimed title and interest in said real estate under, by and through said United States under the claim of homestead rights which originated and was initiated, if at all, long after said purchase by the defendant, and with full notice and knowledge on their part of the rights of these defendants as herein

alleged, and of all the facts and circumstances in this answer
71 detailed and recited, and defendants aver that they are in like manner barred and estopped from maintaining this action, questioning the title of defendants or the validity of this defendant's patent, or claiming that their title or interest in said real estate is superior to that of this defendant.

Par —. The defendants further answering complainant's bill of complaint and intervenor's petition and cross bill, state that if it be held by this court that the Act of Congress of March 3, 1887, aforesaid does not apply to the grant of May 12, 1864, then this complainant and Intervenor and neither of [the] cannot maintain this action or their said bill or petition or cross bill, in this; that under the act of May 12, 1864, being the grant of lands in this action involved, the land in controversy, as well as the lands within the twenty (20) mile limit of the located and constructed railroad of the Sioux City & St. Paul Railroad Company, were withdrawn from the public domain which was subject to homestead entry, and was thereby reserved from the operation of the Homestead Laws under which the complainant and intervenor herein sought to secure title to said lands, and upon which they based their right to maintain this action, and if said Act of March 3, 1887, does not apply to said lands or the said grant of May 12, 1864, then said land was, at the time of his alleged applications to homestead the same, and at all times has been reserved from the operation of the Homestead Laws of the United States and there had been no act of Congress or lawful proceeding taken opening said lands to homestead entry or settlement and the complainant and the Intervenor acquired nothing by their applications, and they have no such rights, title or interest in and to said land as authorizes them or either of them to [main] this action or question defendant's title or patent to said land.

Par. 45. That the complainant and Intervenor herein have no standing in this court, no right to maintain this suit and no right or authority at law to question or attack the patent herein referred to, for the additional reasons.

That the Land Department, Department of this Government, in the hearing upon the various applications of the parties claiming this land, found and determined as follows:

That one J. H. Pasco, purchased the land in controversy of the Sioux City & St. Paul Railroad Company June 21, 1887, paying therefor the sum of \$160 and that he broke and cultivated the same until July 18, 1889, when he sold, assigned and transferred the said contract, together with all his right, title and in-

72 interest in said land to A. and G. W. Patterson (G. W. Patterson being defendant herein), in consideration of \$800: that A. Patterson died October 18, 1893, and the defendant G. W. Patterson succeeded to all the rights under said contract of purchase from the said railroad company; that the defendant has cultivated the land in controversy since his purchase, has regularly paid the taxes thereon, and has paid the said railroad company \$714 on the deferred payments; that the defendant Patterson was a good faith purchaser and that he is entitled as such to a confirmatory patent under the Act of March 3, 1887; that the complainant entered upon said land in the evening of October 22, 1895, in a wagon and stayed there all night; that in the morning of the 23rd day of said month complainant hauled a small shanty thereon and remained there that day and night; that complainant went back upon the premises March 20, 1896, and stayed there until April 11, 1896; he was then ejected by legal proceedings. That the homestead applicant Beacom broke and cultivated one half acre thereon during 1875 and 1876; that Beacom's entry was prior to that of any other homestead applicant but that by previous entry he was disqualified to homestead the land in controversy; that complainant herein submitted no evidence in support of his claim under the Act of March 3, 1887.

Homestead applicant Beacom filed motion for re-hearing under Letter of March 23, 1895, under Act of December 29, 1894 amendatory to Sec. 37 of the Act of March 2, 1889; upon this filing the Register and Receiver of the local Land Office set aside their former decision and ordered new hearing held September 14, 1897, whereupon defendant Patterson moved for writ of certiorari to bring up case before Commissioner on its merits; on July 20, 1897 the Department held that the Register and Receiver had no jurisdiction after appeal and no authority to issue order for rehearing; upon Letter of August 4, 1897 the Register and Receiver duly forwarded record of the case to the Commissioner of General Land Office, who considered the same on the 28th of August 1899, and upon such hearing the Commissioner of the General Land Office affirmed the judgment findings of the Register and Receiver, with reference to Patterson's connection with the premises in question, and his good faith purchase, but decided that he was not entitled to the land solely on the ground that he held a modified contract; and before the Commissioner Beacom claimed right to make second entry by virtue of the Act of December 29, 1894 (28 Stat. 599)—General Circular of 1896, page 209. This claim of Beacom's was upheld by the Commissioner, whereupon defendant Patterson complainant Lyle and intervenor Lewis Hoffman appealed to the Secretary of the Interior, who, April 21, 1900 reversed the decision of the Commissioner of the General Land Office and awarded the land to Patterson as a good faith purchaser under the Act of March 3, 1887, and that Patterson was duly issued a patent for said land on March 23, 1901. The final receiver's receipt to said land having been issued to said Patterson for said land several months preceding the date of the issuance of patent.

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That according to the findings and decision of the Department of the Interior, the homestead applicant Beacom was declared to have the preference right to homestead the land in controversy, as against the complainant Lyle and Intervenor Hoffman, and this fact was found and determined by the Interior Department, and especially by the Commissioner of the General Land Office, and whose decisions upon that point has never been disputed, and by reason of the finding of the Department of the Interior, as a fact, that said Beacom is entitled to, as against complainant and intervenor, to homestead said land, the said complainant and intervenor acquired no rights, interest or title to said land by virtue of their homestead applications nor by virtue of the proceedings in said contest for said land in controversy that entitled them, or either of them, to maintain this suit, to question or attack the patent issued by the United States Government to the defendant Patterson for the land in controversy; that according to the decisions and findings of the Interior Department upon said contest, and under and by virtue thereof, neither the complainant herein nor the intervenor herein acquired any right, title or interest whereby they can maintain this suit or question or attack the patent issued in said proceedings upon the direction of the Secretary of the Interior; that by the institution of this suit on behalf of complainant, and the intervention by Hoffman they have merely invoked or solicited this court to find, determine and pass upon questions that properly belong to the Interior Department of the Government, and concerning which this court is without jurisdiction to hear, try or determine.

Par. 46. That the patent issued to the defendant Patterson was duly recorded in the office of the Recorder of Deeds of O'Brien County Iowa; that on January 30, 1901 and after the issuance of the final receipt to the land in controversy, the defendant Patterson sold transferred, and deeded the land in controversy to T. H. Smith and W. H. Smith, jointly, in consideration of the sum of \$6360. which said deed was filed for record Jan. 31, 1901; and recorded in book 38, page 133 of the records of O'Brien County, Iowa; that on

74 March 31, 1901, the said T. H. Smith and W. M. Smith sold, transferred and deeded the premises in controversy to the defendant Thos. Beacom by warranty deed, in consideration of the sum of \$6600. which said deed was duly recorded in O'Brien County, Iowa, March 25, 1901; recorded in book 38 page 198 of the records of said county, and that the said defendant Thomas Beacom is now the absolute owner of the fee simple title to the land in controversy, and that the various transfer- of the said land by deed, as herein recited, were made in the good belief upon the part of the grantors and grantees in each instance; that the grantors at the dates of said conveyances were the absolute owners in fee simple of the title to said land and that they had good right and lawful authority to sell and convey and transfer said land, and that the said transfer and conveyances were made without any notice, actual or constructive, or without any thought or belief upon the part of any of said parties that the complainant herein

or the intervenor herein had any right, title or interest or claimed any right title or interest in or to the said premises in question.

That on the 15th day of January 1904, the defendant Thomas Beacom made, executed and delivered to the Northwestern Mutual Life Insurance Company of Milwaukee, Wisconsin, a corporation duly organized under the laws of said state, a mortgage securing the payment of a loan of \$3800 that day made by the said company to said defendant; due 5 years from date, drawing 5% interest; that said mortgage was filed for record in O'Brien County, Iowa, in the office of the recorder of deeds, February 20, 1904, and recorded in book 49, page 24, of the mortgage or records of said county.

That the defendant Beacom made, executed and delivered on February 1, 1904 to the Empire Loan and Investment Co., of Sheldon, Iowa, a corporation under the laws of Iowa, a mortgage of \$2,000 to secure the payment of that sum borrowed of said company by the defendant on that date, the same drawing 8% interest, and due February 1, 1907; that the said mortgage was duly filed for record in the office of the recorder of deeds of O'Brien County, Iowa, March 9, 1904, and recorded in book 45 page 229.

That the said mortgages were executed in good faith belief upon the part of all parties concerned and connected therewith, that the said Thomas Beacom was the bona fide owner in fee simple of the title to said land; that he had good right and lawful authority to sell and convey the same and mortgage the same; that said mortgages are now valid and subsisting liens and have not been paid or discharged of record.

75 That the receiver's receipt heretofore referred to as issued to the defendant Patterson was issued on July 20, 1900 and was filed for record January 31, 1901 at 8 o'clock A. M., and recorded in book 38, page 132 of the records of the office of the recorder of deeds of O'Brien County, Iowa, and that the said patent was filed for record April 15, 1901, at 3 o'clock P. M. and recorded in book 38, page 223.

Par. — This defendants deny all wherewith they are by the said bill and petition of intervention charged, without this, that there is any other matter, cause or things in complainant's said bill of complaint or said petition of intervention contained, material or necessary for these defendants or any of them to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court may direct, and hereby prays to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, and such equitable orders and decrees be entered in their favor as may seem just and equitable to the Court.

GEORGE W. PATTERSON,
T. H. SMITH,
W. M. SMITH,
THOMAS BEACOM,

Defendants.

W. D. BOIES, *Counsel.*

STATE OF IOWA,
O'Brien County, ss:

Thomas Beacom makes solemn oath and says I am one of the above named defendants, and aver the same on behalf of all; so much of the foregoing answer as concerns my acts and deeds is true to the best of my knowledge and so much thereof as concerns the acts of or deeds of any other person or persons I believe to be true.

THOMAS BEACOM.

Subscribed and sworn to before me by the said Thomas Beacom this 30th day of September 1905.

[SEAL.]

T. E. DIAMOND,

Notary Public in and for O'Brien County, Iowa.

* * * * *

(Here follows Exhibit 1 to the answer of Geo. W. Patterson, et al., the same being a map showing the line of location of the Sioux City & St. Paul Railway, which is omitted pursuant to the stipulation of the parties set out at page 1 of this printed record.)

EXHIBIT "2."

The United States of America to all to whom these presents shall come, Greeting:

Whereas, by Act of Congress approved May 12, 1864, entitled "An Act for a grant of land to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," from Sioux City in said State, to the South line of the State of Minnesota, at such point as the said State of Iowa may select, between the Big Sioux and the West Fork of the Des Moines River," every alternate section of land, designated by odd numbers, for ten sections in width, on each side of said road,

And Whereas, it is further enacted that "in case it shall appear that the United States have, when the line of route of said road is definitely located, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, then so much land in alternate sections or parts of sections designated by odd numbers, as shall be equal to such land as the United States have sold, reserved or otherwise appropriated, or to which the right of homestead settlement or pre-emption has attached, shall be held by the State of Iowa for the uses and purposes aforesaid; Provided, That the lands so selected shall in no case be located more than twenty miles from the line of said road."

And whereas, there has been filed in this office, through the Secretary of the Interior under date of July 26th and August 10th, 1872, and February 10, 1873, evidences of the completion of the first, second, third, fourth and fifth sections of ten miles each of the Sioux City & St. Paul Railroad from the south line of the State of

Minnesota, southerly to a point in Section sixteen, township ninety two, range forty five, making in all fifty continuous miles of said road;

And whereas, the sections and parts of sections of land inuring to the State of Iowa in aid of the construction of the Sioux City & St. Paul railroad for the said fifty miles of road have been selected and reported to this office in accordance with the acts and rules and regulations of the General Land Office as shown by the original lists of selections dated August 1, 1872, and February 23, 1873, and certified under date of August 1, [182,] and March 5, 1873, by the register and receiver at Sioux City, Iowa, the said tracts being described as follows, [to with], the lands in controversy and other lands.

North of Base Line and West of the Fifth Principal Meridian, Iowa, ten miles limits, Sioux City District;

The said tract, as described in the foregoing pages from two to number nineteen, inclusive, containing the aggregate of (205,-374.76) Two Hundred and Five Thousand Three Hundred and Seventy Four acres and seventy six hundredths of an acre.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said act of Congress, have given and granted and by these presents do give and grant unto the said State of Iowa, for the use and benefit of the Sioux City and St. Paul Railroad Company of said State, and its assigns, the tracts of land selected as aforesaid, and described in the foregoing.

To have and to hold the said tracts, with the appurtenances unto the said State for the use and benefit of said Sioux City & St. Paul Railroad Company and its assigns forever.

In Testimony whereof, I Ulyses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, this seven-teenth day of June in the year of our Lord one thousand eight hundred and seventy three, and of the independence of the United States the ninety seventh.

By the President:

[SEAL.]

U. S. GRANT,
By S. D. WILLIAMS,
Secretary.

EUGENE A. FISKE,
Acting Recorder of the General Land Office ad Interim.

EXHIBIT No. 4.

Land Department of the Sioux City and Saint Paul Railroad Company.

This Agreement, made this — day of — in the year 18— between the Sioux City and Saint Paul Railroad Company, and Elias F. Drake and Amherest H. Wilder, Trustees, named in a certain Trust Deed, executed by said Company and dated August 1st, 1871,

of the first part, and ——— of the County of —, State of Iowa
of the second part;

78 Witnesseth; That in consideration of the stipulation herein contained, and the payments to be made as is hereinafter specified the first party hereby agrees to sell unto the second party, the — of Sec. No. — in Township No. — North, of Range No. — West of the fifth P. M., containing according to the United States Survey, — acres, be the same less or more, for the sum of — dollars, on which the said second party hath paid the sum of — dollars, on account of the principal.

And the second party in consideration of the premises hereby agrees to pay to the said first party at the office of the Land Department of the Sioux City & St. Paul Railroad Company, at St. Paul Minnesota, the following sums of principal and interest, at the several times named below.

When due.	Principal.	Interest.	Total.	Back Interest.	Deposit.	Total.	Evidence of payment.
6							

And it being mutually understood, that the above premises are sold to the said second party for improvement and cultivation, the said second party hereby further agrees and obligates, — heirs and assigns, that all improvements placed upon said premises shall remain thereon, and shall not be removed or destroyed until final payment of said lands. And further, that — will punctually pay said sums of money above specified, as each of the same becomes due; and that — will regularly and seasonably pay all such taxes and assessments as may be lawfully imposed upon said premises.

And in case the said second party — legal representatives, or — assigns, shall pay the several sums of money aforesaid, punctually, and at the several times above limited, and shall strictly and literally perform all and singular the agreements and stipulations aforesaid, according to their true tenor and intent, then the first party will make unto the second party, heirs or assigns upon request at the Land Office of the first party at St. Paul, and the surrender of this contract, a deed conveying said premises, in fee simple, with

79 the ordinary covenants of warranty, reserving however, a strip of land one hundred feet wide, to be used by the first party for a right of way or other railroad purposes, where the main line or any branch of its railroad is laid over the premises.

But in case the second party shall fail to make the payments aforesaid, strictly, and punctually, and upon the strict terms and time

above limited, and likewise to perform and complete all and each of the agreements and stipulations aforesaid, strictly and literally without any default or failure, the time of payment being of the essence of this Contract, then the party of the first part shall have the right to declare this contract null and void, and all right and interest hereby created or then existing in favor of the second party or derived under this Contract shall utterly cease and determine and the premises hereby contracted shall revert to and revest in said first party (without any declaration of forfeiture, or act of reentry, or without any other act by said first party to be performed, and without any right of said second party of reclamation or compensation, for moneys paid and improvements made), as absolutely, fully, and perfectly as if this Contract had never been made.

And It Is Further Stipulated, That no assignment of the premises shall be valid unless the same shall be endorsed hereon, or permanently attached thereto, and countersigned by the first party (for which purpose the Contract must be sent to this office) and that no agreement or conditions or relations between the second party and — assigns, or any other persons, acquiring title or interest from or through — shall preclude the first party from the right to convey the premises to said second party, or — assigns, on the surrender of this agreement and the payment of the unpaid portion of the purchase money which may be due to the first party.

In Witness Whereof, The Sioux City & St. Paul Railroad Company have hereunto caused its corporate seal to be affixed and hath caused these presents in duplicate, to be signed by its proper officer, and the second party hath hereunto set — his name, and the said Trustees have hereunto set their names, in the day and year above written.

(Here is affixed the following stamp:) "Sioux City & St. Paul Railway Company, Iowa & Minnesota."

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President Sioux City & St. Paul Railroad Company.

Secretary Sioux City & St. Paul Railroad Company.

Countersigned and approved.

Witnesses:

Witnesses:

Trustees.

(Purchaser).

P. O. Address.

(Endorsed on the back.)

Assignment.

— the within named purchaser and — his wife, for and in consideration of — dollars do hereby assign and transfer all — right, title interest and claim in and to the — Sec.; — Tp. — R. —, the within described, unto — heirs and assigns forever, And — do hereby authorize The Land Department of the Sioux City & St. Paul Railroad Company, to receive from the said — all unpaid balances due to said Company, on account of the within agreement, in part consideration of said land, and upon the final payment of all the purchase money; and a full, compliance with all the agreements contained in the within agreement, to execute or cause to be executed to the said — heirs or assigns, a deed for said land instead of to —.

Given under — hand and seal this — day of — A. D. —.

[SEAL.]
[SEAL.]

Witnesses.

Countersigned;

THE SIOUX CITY & ST. PAUL RAIL-
ROAD COMPANY,

By — —.

81 It is expressly understood that in consenting to recognize this assignment, the first party herein does not exempt the original purchaser from any of — liabilities under the contract to protect the rights of the assignee provided he complies with its obligations.

STATE OF IOWA,
County of —:

Beofre me — — in and for said County, this day personally came, — — hwo known to me to be the identical person who — described in the within agreement and who executed the foregoing assignment and acknowledged that — signed sealed and delivered the same as — free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand this — day of —, A. D. 18—. — —.

NOTE.—The wife of the purchaser, if he have one must join in the assignment and if the purchaser is unmarried, so state.

In consideration of the above assignment I hereby accept the conditions of this Contract, and acknowledge myself bound to perform and conform to all the obligations therein set forth.

In Witness whereof, I have hereunto set my name this — day of
—, A. D. 19—.

Witness:
—

No. — Agreement, Sioux City & St. Paul Railroad Co. with —
— For — of Sec. — Township — Range —. P. O. —, County,
of —, State of —.

Endorsed: Equity No. 210: U. S. Circuit Court, Northern District
of Iowa, Western Division; Roscoe Lyle, vs. Geo. W. Patterson et al.
Answer; Filed Oct. 3, 1905. A. J. Van Duzee, Clerk. By J. H.
Bolton, Clerk.

And on the 1st day of October 1906 there was filed in the office
of the Clerk of said Court in this cause, a Replication which is in
words and figures following, to-wit:

In the Circuit Court of the United States, Northern District of Iowa,
Western Division.

82

ROSCOE LYLE, Plaintiff,

vs.

GEO. W. PATTERSON et al., Defendants; L. HOFFMAN, Intervenor.

Replication.

This replicant, Roscoe Lyle, saving and reserving to himself all
and all manner of advantages of exception, which may be had to the
manifest errors, uncertainties and insufficiencies, in the answer of
the defendants Geo. W. Patterson et al., for replication thereunto
says; that he does and will aver, maintain and prove his said bill
to be true, certain and sufficient in the law to be answered unto by
the said defendants and that the answer of the said defendants is
very uncertain evasive, and insufficient in the law to be replied unto
by this repliant; without that, that any other matter or thing in the
said answer contained, material or effectual, in the law to be replied
unto, and not herein and hereby well and sufficiently replied
unto, confessed or avoided, traversed or denied, is true, all which
matters and things this repliant is ready to aver maintain and prove,
as this Honorable Court shall direct; and humbly prays as in his
said bill he has already prayed.

J. T. STEARS AND
M. B. DAVIS,
Solicitors for Complainant.

Filed October 1, 1906. A. J. Van Duzee, Clerk. J. H. Bolton,
Deputy.

And on the 1st day of September 1907 there was filed in the office of the Clerk of said Court in this case a Stipulation and Agreed Statement of Facts, which is in words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Western Division.

No. 210. In Equity.

ROSCOE LYLE, Plaintiff,

VS.

GEORGE W. PATTERSON et al.; LOUIS HOFFMAN, Intervenor,
Defendants.

For the purposes of the trial of this cause it is hereby stipulated and agreed that the following statements of fact, together with the exhibits hereto attached, and herein referred to, shall be received and considered as the evidence in the cause, with the same force and effect as if taken in the usual manner, and subject to the same objections as though the originals were in each case offered, introduced and returned; that all objections to the materiality of the testimony may be taken upon the hearing of the case with the same force and effect as though made and noted herein; nothing, however, in any objection interposed or made shall be considered as raising the question that the said statements of fact or the said exhibits attached or referred to are not the best evidence, or incompetent by reason of not being the best evidence.

MADISON B. DAVIS,
THOS. G. HENDERSON,
Solicitors for Plaintiff.
W. D. BOIES,
Solicitor for Defendant.

E. B. EVANS,
Solicitor for Intervenor.

In the Circuit Court of the United States for the Northern District of Iowa, Western Division.

No. 210. Equity.

ROSCOE LYLE, Plaintiff,

VS.

GEORGE W. PATTERSON et al., Defendants; LOUIS HOFFMAN,
Intervenor.

Agreed Statement of Facts.

Par. 1. That the Congress of the United States, on May 12, 1864, passed an act entitled, "An Act for the Grant of Lands to the State

of Iowa, in Alternate Sections, to Aid in the Construction of a Railroad in said State." Approved May 12, 1864 (12 Stat. 72), a copy of which act is correctly set forth in Exhibit No. 1, which is hereto attached.

Par. 2. That on the 3rd day of April, 1866, the General Assembly of the state of Iowa passed an act entitled, "An Act to Accept of the Grant and Carry into Effect the Trust Conferred upon the State of Iowa, being an act of Congress, entitled 'An Act for a Grant of Lands to the State of Iowa, in Alternate Sections, to Aid in the Construction of a Railroad in said State.'" Approved April 3rd, 1866, and which act is correctly set forth in Exhibit No. 2 attached hereto, and is found on page 144 of the Laws of the General Assembly of the State of Iowa for 1866, being chapter 124 thereof.

Par. 3. That the General Assembly of the State of Iowa, on April 20th, 1866, passed an act entitled, "An Act to Accept the Grant of Land to the state of Iowa, made by an act of Congress, May 12, 1864, and to carry out the Provisions of the said Act, entitled, 'An Act for a Grant of Lands to the State of Iowa, in Alternate Sections, to Aid in the Construction of a Railroad in said State.'" 84

Which act was approved April 20th, 1866, and a copy of which is correctly shown in Exhibit No. 2, attached hereto, the said act being found in the Laws of the General Assembly of the State of Iowa, for the year 1866 on page 189, being chapter 144 thereof.

Par. 4. That on the 24th day of March, 1868, the General Assembly of the State of Iowa, passed an act correcting a clerical error in the act described in Exhibit No. 2 aforesaid, which act was approved March 24th, 1868, and is correctly shown in Exhibit No. 4 attached hereto, the said act being chapter 42 of the Laws of the General Assembly of the State of Iowa for the year 1868.

Par. 5. That on the 19th day of September, 1866, the Sioux City & St. Paul Railroad Company filed in the office of the Secretary of the State of Iowa its written acceptance of the said Grant of Congress and of the several Acts of the General Assembly of the state of Iowa, upon the terms, conditions, restrictions, and limitations therein contained, a copy of which written acceptance is hereto attached, marked Exhibit No. 5, which acceptance was duly filed with the said Secretary of State on the 26th day of September, 1866.

Par. 6. That on the 27th day of September, 1866, the Sioux City & St. Paul Railroad Company, commenced the location of its line of railroad in Sioux City, in the State of Iowa, and between that time and the 4th day of October, 1866, it located and established the line of road by locating and surveying same on the face of the earth from Sioux City, Iowa, to a point on the southern line of the state of Minnesota, in Section No. 12, Township 100, North of Range 41 West of the 5th P. M., a distance of 82 miles and 52 rods from Sioux City, Iowa; which point on the south line of the state of Minnesota was selected by the said Sioux City & St. Paul Railroad Company under and pursuant to the authority conferred by Section six of the General Assembly of the State of Iowa, approved April 3rd, 1866, and attached hereto as Exhibit No. 2. The said point being

at a point selected by the said Railroad Company for that purpose between the Big Sioux River and the West Fork of the Des Moines River, about equidistant from said streams and being the point of connection on the southern line of the State of Minnesota where the land grant railroad from St. Paul and Minneapolis in the State of Minnesota, provided for in the Acts of Congress of March 3rd, 1857, and May 12, 1864, intersects said state line, and forming a continuous line of said road as contemplated and designated by the said Acts of Congress, and said line of railroad as so located and surveyed being correctly shown, appearing and designated on 85 the consolidated map hereto attached, marked Exhibit No. 8, and designated by a heavy red line marked "Located line Sioux City St. Paul Railroad."

Par. 7. That the State of Iowa did not select the point on the southern line of the State of Minnesota between the Big Sioux River and the West Fork of the Des Moines River as a terminal point of the said Line of railroad from Sioux City, Iowa, to the Southern line of said state, but the Sioux City & St. Paul Railroad Company made selection of such point and line, pursuant to the authority conferred upon it by Section No. 6 of Chapter 124 of the Laws of the General Assembly of the State of Iowa, for the year 1866, the said Act being Exhibit No. 2, before mentioned.

Par. 8. That on the second day of April, 1867, the said Sioux City & St. Paul Railroad Company, under the seal of said company, by its President and Secretary, certified to the said map of location, and filed the same in the office of the Secretary of the State of Iowa; and, on the 10th day of July, 1867, W. M. Stone, Governor of the State of Iowa, and Edward Wright, Secretary of the State of Iowa, certified to the said map and on the 16th day of July, 1867, the said map together with the said certificates, was caused to be filed in the office of the Secretary of the Interior of the United States which said certificate and endorsement of filing are conceded to be proper, sufficient and in due and legal form.

Par. 9. That on the 16th day of July, 1867, the Secretary of the Interior duly accepted said map of definite location as the basis for the adjustment of the land grant made to the State of Iowa, to aid in the construction of said line of road, and transmitted said map to the Hon. Joseph H. Wilson, commissioner of the General Land Office of the United States, with instructions to direct the local land officers to withdraw the land so granted to the State of Iowa, from sale or other disposal, which said instructions and acceptance were in writing and are correctly set forth in the copy of the letter of said Secretary of the Interior to the said Commissioner of the General Land Office, which copy is hereto annexed, marked Exhibit No. 7.

Par. 10. That on the 20th day of August, 1867, Joseph S. Wilson, Commissioner of the General Land Office of the United States, accepted the receipt and filing of the said maps in accordance with the said Act of Congress, approved May 12, 1864, and by an order in writing, directed the Register and Receiver of the Land Office in Sioux City, Iowa, to withdraw from sale or other disposal all of

86 the odd numbered sections of land within a limit of 20 miles on each side of said line of railroad, as located on said map of location, for the purposes as stated in such letter, and increasing the price of even numbered sections of land within the said 10 mile limit to \$2.50 per acre; which limits of withdrawal, as shown on said map accompanying said letter of August 26th, 1867, are correctly shown upon the consolidated map, Exhibit No. 6 herein, the said 10 mile limits being shown by heavy red lines marked, "Ten miles limit Sioux City & St. Paul Railroad," and the said 20 mile limit being shown thereon by heavy blue lines marked "Twenty mile limit Sioux City & St. Paul Railroad," and a copy of said letter to the Register and Receiver and map accompanying the same, marked Exhibit No. 8, A & B hereto attached, and certificates thereto attached marked Exhibit 8, C D and E and a copy of the correspondence between the Land Commissioner of the Sioux City & St. Paul Railroad and the Commissioner of the General Land Office, relative to the origin of the said map, being hereto attached marked Exhibit No. 22.

Par. 11. That on or about the second day of September, 1867, John Cloghorn, Register of the said United States Land Office at Sioux City, Iowa, received said map and letter of withdrawal and on the same day, by letter in writing, acknowledged the receipt thereof to the said Commissioner of the General Land Office of the United States, a copy of which letter is hereto attached, marked Exhibit No. 9.

Par. 12. That in the year 1872, the Sioux City & St. Paul Railroad Company commenced the construction of a railroad from its connection with the St. Paul & Sioux City Railroad at the southern line of the State of Minnesota, at or near the south west corner of section 21, Township 101, Range 40, in Minnesota and on the southern line of the said State of Minnesota, being a point on the north line of the State of Iowa, Section 9, Township 100, Range 41, and constructed the same in a southerly direction to the town of Le Mars in the County of Plymouth, and State of Iowa; a total distance of said line of $6\frac{1}{4}$ miles, on or before the 25th day of September, 1872, and had and did also prior to that date, construct and build main track and side track for such railroad in the City of Sioux City, Iowa, for a distance of about two miles, which facts more fully appear upon and by the said line of construction as shown by a black line marked, "Constructed line Sioux City & St. Paul Railroad," upon the consolidated map hereto attached, marked Exhibit No. 6, and which facts were fully shown upon a map of construction filed by the said company in the office of of the Secretary of the State of Iowa, on the 4th day of February, 1887, and which map was accompanied by the certificates of J. W. Bishop, Chief

87 Engineer of said company E. F. Drake, President of said company, and the said map together with said certificates, and the certificate of C. C. Carpenter, Governor of the State of Iowa, Josiah T. Young, Secretary of the State of Iowa, duly indorsed thereon, was filed in the office of the Commissioner of the General Land Office, of the United States on the 10th day of

February, 1872; all of said certificates and certificate of filing being properly indorsed upon the same and such certificates and certificate of filing being in due, proper, and sufficient form.

Par. 13. That the certificates of J. W. Bishop, Chief Engineer of said company, E. F. Drake, President of said Company, C. C. Carpenter, Governor of the State of Iowa, and Josiah T. Young, Secretary of the State of Iowa, which were indorsed upon and attached to the map referred to in paragraph No. 12 hereof, were in the form as shown by the copy of such certificates which are hereto attached, marked Exhibits 10, 11 and 12.

Par. 14. That the said map of construction referred to in paragraph No. 12 hereof showed on the same by flags and dates, the location and date of construction of the five sections of 10 miles each, and the fractional section of $6\frac{1}{4}$ miles of railroad, the same as such sections are shown by flags and dates on the said constructed line shown upon the consolidated map, Exhibit No. 6.

Par. 15. That C. C. Carpenter, Governor of the State of Iowa, did, on the 26th day of July, 1872, and on the 10th day of August, 1872, and on the 4th day of January, 1873, make and file with the Secretary of the Interior, certificates showing the construction of five sections of 10 consecutive miles each of said railroad, copies of which certificates are hereto attached as Exhibits Nos. 13, 14 and 15.

Par. 16. That on the 25th day of February, 1873, the said Sioux City and St. Paul Railroad Company, by its duly authorized agent, selected the tract in controversy between plaintiff and defendant, with other lands, as and for a part of the lands inuring to said company under said Act of Congress of May 12th, 1864, and filed a written list of said selection with the Register and Receiver of the United States Land Office at Sioux City, Iowa, which said officers on the 5th day of March, 1873, allowed and approved the filing of said list and certified the same as being within the ten mile limits of said grant, and as being free and clear from homestead, pre-emption, state or other valid claims, which said list was duly transmitted to the Commisisoner of the General Land Office. That the Com-

88 missioner of the General Land Office, on the 9th day of June, 1873, duly approved the said selection of said land by said railroad and transmitted to the Secretary of the Interior a list embracing said tract of land, and the said Secretary of the Interior on the 10th day of June, 1873, duly approved the said selection and certificate, and caused true copies of said approved list to be filed with the said Register and Receiver at Sioux City, Iowa, and with the Governor of the State of Iowa. That on the 17th day of June, 1873, the said Secretary of the Interior of the United States caused to be issued to the State of Iowa, for the use and benefit of said Sioux City & St. Paul Railroad Company, a patent for 205,374.76 acres embracing the said tract in controversy as and for a part of the lands inuring to said State of Iowa and said Sioux City & St. Paul Railroad Company under Act of Congress of May 12, 1864. That on February 25, 1873, the Sioux City & St. Paul Railroad Company, by its duly authorized agent, selected 112,897.49 acres of land within the 10 mile limit, and 68,221.53 acres within

the 20 mile limit, and that the same was reported to the Register and Receiver of the United States Land Office on March 6th, 1873, and that in the work of making the selection and report above, it was one and the same transaction and at the same time, and that the total amount in said selection was 181,119.02 acres.

Par. 17. That on the list approved by the Secretary of the Interior referred to in the preceding paragraph, the following recital appears: "Now, therefore, as it has been found on a careful examination of the foregoing selections, in connection with the records of the General Land Office, that the said selections, so far as said records show, are free from conflict, it is hereby recommended that the tracts in the foregoing be approved and carried into patent, as provided in the act aforesaid." That the foregoing was made by the Commissioner of the General Land Office, and that the following was all that was said by the Secretary of the Interior, to-wit: "Department of the Interior, Washington City, D. C., June 10, 1873. Approved, C. Delano, Secretary."

Par. 18. That the General Assembly of the State of Iowa passed an act entitled, "An Act Authorizing and Directing the Governor to certify to the Sioux City & St. Paul Railroad Company, certain lands named therein." Which act was approved March 12, 1874, being chapter 24 of the Private, Local and Temporary Laws of the General Assembly of the State of Iowa for the year 1874, a copy of which act is hereto attached as Exhibit No. 16.

89 Par. 19. That on the 20th day of November 1878, the Chicago, Milwaukee & St. Paul Railway Company, which, by certain acts of the Legislature of the State of Iowa had become the successors of the McGregor & Western Railway Company, completed the construction of its road to a point of intersection with the aforesaid line of location and construction of the said Sioux City & St. Paul Railroad Company in Section 21, Township 97, Range 42, West of the 5th P. M., within the County of O'Brien, in the state of Iowa, and at or near the town of Sheldon therein.

Par. 20. That on the 7th day of April 1879, the Chicago, Milwaukee & St. Paul Railway Company commenced, in the Circuit Court of the United States for the district of Iowa, an action against the Sioux City & St. Paul Railroad Company, E. F. Drake, and Alexander H. Rice, trustee; and against John H. Gear, Governor of the State of Iowa, and J. K. Powers, Register of the State Land Office, of the State of Iowa, and filed their bill of complaint therein, embracing all the lands within the overlapping limits of the respective railroad companies. The object of the suit being for the purpose of determining the title to said lands as between said railroad companies.

Par. 21. To this bill of complaint the Sioux City & St. Paul Railroad Company Alexander H. Rive and Elias F. Drake, trustees filed on the 30th day of May 1879, their joint answer to the said bill of complaint, denying the right of complainant to the said land and asserting and claiming right and title in themselves thereto.

Par. 22. That to the said bill of complaint John H. Gear, Governor of the State of Iowa, and J. K. Powers, Register of the State

Land Office, by J. F. McJunkin, Attorney General of the said state, filed their answer to said bill resisting and denying the claim of complainant therein, but admitting the several acts of Congress, and the acts of the General Assembly of the State of Iowa, set forth as Exhibits to the said bill as shown by the agreed statement of facts.

Par. 23. That in the said action the said Governor of the state and the said Register of the State Land Office were enjoined by an injunction issued in said cause, from in any way patenting or conveying to the said Sioux City & St. Paul Railroad Company said lands.

Par. 24. That thereafter such proceedings were had in the Circuit Court of the United States, in the District of Iowa, and in the Supreme Court of the United States, as that on the first day of May 1886, there was entered and recorded in the said Circuit Court 90 in pursuance of the mandate of the Supreme Court of the United States a decree of the said court, a copy of which is hereto attached, marked Exhibit No. 17. And in pursuance of said decree, further proceedings were had in partition of said land, and further decree was made and entered in said court making partition of said lands, a copy of which is hereto annexed as Exhibit No. 18.

Par. 25. That on the 16th day of January 1887, an application was addressed to the Secretary of the Interior on behalf of certain settlers in O'Brien and Dickinson Counties, Iowa for the lands in controversy and other lands referred to in said decree and partition as not patented by the state, requesting that the Attorney General of the United States be asked to commence and prosecute a suit in the name of the United States to assert its title to the land: that upon the hearing and application, arguments were made before the Secretary of the Interior, by counsel representing said applicants, and also by counsel representing the Sioux City & St. Paul Railroad Company, and the Chicago, Milwaukee & St. Paul Railway Company, respectively. That in the matter of said application upon due hearing thereof, the said Secretary of the Interior did, on the 26th day of July 1887, render his decision in writing which was addressed to the Commissioner of the General Land Office, a copy of which, so far as the same pertains to the adjustment of the land grant of the Sioux City & St. Paul Railroad Company, is hereto annexed marked Exhibit No. 19.

Par. 26. That on the 11th day of August 1887, S. M. Stocksleger, Acting Commissioner of the General Land Office of the United States, following the instructions and order of the Secretary of the Interior with reference to the adjustment of the grant, made and addressed a communication to the Hon. William Larabee Governor of the State of Iowa, a true copy of which communication is hereto attached marked Exhibit No. 20. And that the said Governor failed to comply with the request contained in said communication.

Par. 27. That following such failure on the part of the Governor of the State of Iowa to comply with the request contained in the communication, Exhibit No. 20, and on January 11th, 1888, (G.

L. D. 481) the Secretary of the Interior addressed a communication to the Attorney General of the United States relative to the commencement of a suit for the recovering of the lands mentioned in the said Exhibit No. 20, a copy of which letter is hereto attached as Exhibit No. 21.

91 Par. 28. That on the 27th day of September 1886, and on the 30th day of November 1886, the State of Iowa duly patented to the Chicago, Milwaukee & St. Paul Railway Company the land set forth and described in the above mentioned decree in partition, as the lands inuring to the said Chicago, Milwaukee & St. Paul Railway Company under the said decree of said court, which had not been theretofore patented or certified by said state.

Par. 29. That the line of road from the Minnesota state line to Le Mars Iowa, and the tract constructed in Sioux City Iowa as has been before stipulated, was all the road which said railroad company ever constructed in the said state of Iowa, and the said railroad company failed to construct their line of road from the said town of Le Mars to Sioux City Iowa, a distance of about twenty-five miles, and the said road between said points has never been constructed.

Par. 30. That the state of Iowa has never caused said railroad to be completed and has never patented or certified to the Sioux City & St. Paul Railroad Company, or to any other corporation or person, the lands in controversy herein, for the purpose of completing said railroad or for any other purpose.

Par. 31. That on the — day of —, 1887, the Commissioner of the General Land Office made and prepared a map showing a more accurate measurement of the conflicting limits of the grant aforesaid to the Sioux City & St. Paul Railroad Company, a copy of which said map together with all certificates attached thereto appended, marked Exhibit No. 22.

Par. 32. That the map, Exhibit No. 6, attached hereto is a true and correct map, and correctly shows the various lines and routes of the location and construction of the roads of the Sioux City & St. Paul Railroad Company, the McGregor, Western Railroad Company, and its successor, the Chicago, Milwaukee & St. Paul Railway Company; the Dubuque Pacific Railroad Company; and its successor, the Iowa Falls & Sioux City Railroad Company, and the Illinois Central Railroad Company, except the first line of location of the McGregor Western Railroad Company does not appear thereon.

92 Par. 33. That in the year 1872, the Sioux City & St. Paul Railroad Company constructed, from the north line of the corporate limits of the Sioux City within the said city, one and one-tenth miles of track, and erected and built in said city, the machine-shops, depots and roundhouses of the value of \$126,000, and that of the aforesaid sum, the sum of 20,000 was paid to the said railroad out of the proceeds of the special taxes levied and collected from taxable property within the town of Sioux City, Woodbury County Iowa, which tax was voted, Assessed, lev-

ied and collected under and by virtue of the laws of Iowa to aid in building railroads.

Par. 34. That in the year 1879, the Sioux City & St. Paul Railroad Company sold and conveyed to the St. Paul & Sioux City Railroad Company, its roadbed, rolling stock, depot, depot grounds and other property and franchises used in connection with the operation of its railway.

Par. 35. That in the year 1881, the St. Paul & Sioux City Railroad Company sold and conveyed all of the property and franchises obtained from the Sioux City & St. Paul Railroad Company to the Chicago, St. Paul Minneapolis & Omaha Railroad Company neither the St. Paul & Sioux City Railroad Company or the Chicago St. Paul Minneapolis & Omaha Railroad Company being domestic corporations. And that the Chicago St. Paul and Minneapolis & Omaha Railroad Company still owns and operates the said road since the said purchase. And that the Sioux City & St. Paul Railroad Company and the St. Paul and Sioux City Railroad Company have not operated the said road since the sales above named.

Par. 36. That the St. Paul & Sioux City Railroad Company had constructed its line of road as provided for under the act of Congress, March 3rd, 1857, to St. James, Minnesota, and the Sioux City & St. Paul Railroad Company from that point to the southern boundary of the state of Minnesota in Township 100, Range 40, and the Sioux City & St. Paul Railroad in Iowa was so constructed as to form a continuous line with the said first described road: that upon the construction of the Sioux City & St. Paul Railroad from the southern line of the state of Minnesota to Le Mars, it obtained by lease the right to run and operate its trains over the road of the Iowa Falls & Sioux City Railroad from Le Mars to Sioux City, and did continue to run and operate its trains over said line down to the time of the sale of its road to the St. Paul & Sioux City Railroad Company, which company continued to run and operate the same down to the time of the sale of said road to the Chicago, St. Paul Minneapolis & Omaha Railroad Company, which latter company has continued to run and operate said line ever since as one continuous line of railroad from St. Paul and Minneapolis to Sioux City, Iowa.

Par. 37. That prior to the time when the lines or routes of said roads, provided for in the Act of May 12th, 1864, were definitely located, the United States had sold, or the right of pre-emption or homestead settlement had attached, or there had been reserved by the United States such lands as that there then remained of the odd numbered sections, within the ten mile limits of the Sioux City & St. Paul Railroad, as the same appears on the diagram of withdrawal, transmitted to the Register and Receiver of the United States Land Office at Sioux City on the 26th day of August 1867, 212,067.86 acres. Of these lands 50,536.72 acres were within the overlapping ten mile limits of the Chicago, Milwaukee & St. Paul Railway Company one-half of which was, by the decree, Exhibit No. 18 hereto attached, awarded to that company; that within the twenty mile limits, or indemnity limits of

the said Sioux City & St. Paul Railroad Company, as shown by the said diagram, such lands had been so disposed of or reversed as that there remained only 198,842.55 acres. Of these lands 54,165.55 acres were by the said decree awarded to the Chicago Milwaukee & St. Paul Railway Company.

Par. 38. That of the 186,797.80 acres remaining within the said granted limits after deducting the amount awarded to the Chicago Milwaukee & St. Paul Railway Company, there had been by the state of Iowa, certified to the Sioux City & St. Paul Railroad Company 171,546.71 acres and of the 141,837 acres remaining in the indemnity limits after deducting the amount so awarded to the Milwaukee Company, there has been certified by the State of Iowa to the said Sioux City & St. Paul Railroad Company, 109,178.58 acres.

Par. 39. That the selection referred to in paragraphs 16 and 18 of this stipulation show that there was of land within the 10 mile limits a total of 212,067.86 acres, and within the 20 mile limits a total of 198,842.55 acres, and in the aggregate 407,750.21 acres in the odd numbered sections, to which being added 160 acres thereafter approved as an even numbered section, makes a grand total of 407,910.21 acres.

Par. 40. That on the 16th day of October 1872, on the 17th day of June 1873, on the 25th day of January, 1875, and on the 4th day of June 1877, the United States Government issued to the State of Iowa, in trust for the Sioux City & St. Paul Railroad Company patents respectively for 191,464.04 acres; 205,274.76 acres; 10,211.41 acres and 160 acres being a total of 407,910.21 acres, which patent contained a duplication of one 40 acre tract, and the said patents being of uniform form, and a true copy of the patent conveying the land in controversy, excepting only that the description of the land conveyed by it is omitted therefrom, is hereto attached and marked Exhibit No. 24.

94 Par. 41. That on the 18th day of March 1882 an act of the General Assembly of the State of Iowa entitled "An Act to Resume all the Lands and Rights Conferred upon the Sioux City & St. Paul Railroad Company, by or under Act of Congress, approved May 12th, 1864, all lands not heretofore earned by said Company," being chapter 107 of the laws of the 19th General Assembly of said state of Iowa, was duly passed and approved, a copy of which act is hereto annexed marked Exhibit No. 25.

Par. 42. That an act of the General Assembly of the State of Iowa, entitled, "An Act to Relinquish and Reconvey to the United States, all Lands and Rights to Lands Granted to the State of Iowa, in Alternate Sections, to Aid in the Construction of a Railroad in the State of Iowa, approved May 12th, 1864, which had not been earned pursuant to the provisions of said act," was on the 27th day of March 1884, duly passed and approved, being chapter 71 of the laws of the 20th General Assembly of the State of Iowa, a copy of which is hereto annexed, marked Exhibit No. 26. That pursuant to the said act of the General Assembly, the Governor of the State of Iowa, did, on the 12th day of January 1887, relinquish and re-

convey to the United States, 26,017.23 acres of the aforesaid lands patented by the United States to the State of Iowa, in the patents referred to in this statement of facts, and which lands were situated in Plymouth, Sioux, and Woodbury Counties in said state, a copy of which reconveyance is hereto attached marked Exhibit No. 27.

Par. 43. That each and all of the respective acts of the General Assembly of the State of Iowa referred to in this stipulation and statements of facts were duly and legally passed, adopted and published and became respectively laws of the state of Iowa.

Par. 44. That the Congress of the United States, on the 3rd day of March 1887, passed an act entitled "An Act to Provide for the Adjustment of Land Grants Made By Congress to Aid in the Construction of Railroads and for the Forfeiture of Unearned Lands, and for other Purposes." Approved March 3rd 1867 (24 Stat. 556) to which reference is hereby made.

Par. 45. That on the 4th day of October 1889, an action was duly commenced between the United States as Plaintiff against the Sioux City & St. Paul Railroad Company and others as Defendants, in the Circuit Court of the United States, in and for the Northern District of Iowa, Western Division, embracing the lands described in Exhibit No. 28.

95 Par. 46. That on October 20, 1890, a decision was rendered in the said cause in favor of the complainant in said action, and thereafter, on December 18th, 1890, a judgment and decree was entered therein, quieting title in the United States to the land in controversy, and to the lands described in said bill of complaint to the amount of 21,979.85 acres, as stated in such decree, and a true copy of said judgment and decree is hereto attached, marked Exhibit No. 28.

Par. 47. That afterwards the said Defendants duly appealed from said judgment and decree referred to in the preceding paragraphs to the Supreme Court of the United States, and that on such appeal, and on the 21st day of October 1895, the Supreme Court of the United States rendered its opinion, affirming the judgment and decree appealed from (and it is agreed that said opinion may be considered in evidence the same as if offered and a copy of it attached to this statement of facts), such opinion being contained in the United States Supreme Court volume 159, page 340.

Par. 48. That in January 1882, John H. Gear, Governor of the State of Iowa, in his biennial message to the General Assembly of the State of Iowa, in connection with the matter of the grant of lands to the Sioux City & St. Paul Railroad Company heretofore referred to in this stipulation, incorporated certain matters and statements with respect to such grant, a copy of said message so far as the same pertains to the said grant, being hereto attached marked Exhibit No. 29 and made a part hereof.

Par. 49. That on November 18, 1895 the Commissioner of the General Land Office at Washington, D. C., approved by the Secretary of the Interior, addressed a communication to the Register and Receiver at Des Moines, as shown by Exhibit No. 30, being the proclamation or notice and instructions referred to in paragraph 14 of plaintiff's bill.

Par. 50. That pursuant to said order of November 18, 1895, the Register and Receiver of the United States Land Office at Des Moines, Iowa, duly fixed the 27th day of February 1896, as the date prior to which claimants, under the act of March 3rd 1887, should file their applications, and as the date upon which persons claiming under the homestead laws of the United States should file their applications for any of the lands covered or embraced in said order which notice was duly published as provided therein, and on February 27th, 1896, Louis Hoffman, Intervenor, made application to Register and Receiver of Land Office at Des Moines Iowa, to enter the land in controversy as a homestead, which application
96 was the first filed on the 27th day of February 1896 for the land in controversy.

Par. 51. That on or about May 21, 1887, one J. H. Pasco, then a citizen of the United States, entered into a written contract with the Sioux City & St. Paul Railroad Company for the purchase from said Company of the Southwest quarter of Section 3, Township 97, Range 42, a copy of said contract being hereto annexed, marked Exhibit 31, and paid thereon the respective sums as shown in evidence by said contract.

That on July 17th, 1889, the said J. H. Pasco sold and assigned, in writing the said contract described as Exhibit 31 to the defendant George W. Patterson, a true copy of which assignment appears on the back of said Exhibit 31.

Par. 52. That on October 22, 1895, the plaintiff Roscoe Lyle, settled upon the land in controversy in this action to-wit, the Southwest Quarter (SW 1/4 of section three (3) Township Ninety seven (97) Range forty two (42) in O'Brien County Iowa, and on or about February 24, 1896, he tendered to the Register and Receiver of the United States land Office at Des Moines Iowa, a homestead application with the necessary fees therefor to enter to said land, which application and fees were refused by the said Register and Receiver.

Par. 53. That in pursuance of the notice of November 18, 1895 Exhibit 30, plaintiff herein appeared at the United States Land Office at Des Moines Iowa, on March 24, 1896, and tendered his homestead filing for the land in controversy, alleging a settlement, residence and cultivation of said land and a legal qualification to make said entry, and tendered the legal and proper fees and homestead filing therefor and which filing and tender of fees the officers held in abeyance pending the trial and examination of the rights of all parties concerned therein.

Par. 54. That pursuant to the said order of November 18, 1895 Exhibit 30, the defendant George W. Patterson, on or about January 13, 1896, filed with the Register and receiver of the United States Land Office at Des Moines, Iowa, his Written notice of intention to make proof of defendant's purchase of the land in controversy under the provisions of the Act of March 3, 1887.

Par. 55. That the said Register and Receiver of the United States Land Office at Des Moines Iowa, did thereafter duly fix the 13th day of May 1896, as the date upon which proof should be submitted on behalf of the plaintiff and defendant, and all others claiming any

97 interest in said land, notice of which date of hearing was duly published in accordance with the requirements of the Department of the Interior.

Par. 56. That upon May 13, 1896 the plaintiff appeared in person and by his counsel, and the defendant George W. Patterson and others claiming interest therein appeared in person and by their counsel before the said Register and Receiver, and made proof of their respective claims to the land in controversy, and that said land officers did, upon May 13, 1906, render a decision in writing that one Louis Hoffman was entitled to the land in controversy as a homestead.

Par. 57. That the proof offered by the respective parties in support of their respective claims referred to in the preceding paragraph was submitted in writing, a true copy of which is hereto attached marked Exhibit No. 32.

Par. 58. That thereafter the plaintiff Roscoe Lyle, and the defendant George W. Patterson perfected appeals from the Register and Receiver to this Commissioner of the General Land Office, which office August 29 1899, by a decision in writing, addressed to the Register and Receiver of said Land Office, reversed the said decision of the Register and Receiver, and decided that one James A. Beacom was entitled to the land under the homestead laws of the United States, a true copy of which decision is hereto attached, marked Exhibit 33. That thereafter the plaintiff and defendant duly perfected appeals from the said Commissioner to the Secretary of the Interior by which officer the decision of the Commissioner of the General Land Office was reversed on April 21, and a decision entered that the defendant George W. Patterson, purchasing claimant, had a right to purchase said land by virtue of his contract with the railroad company, heretofore referred to and marked Exhibit 31, a copy of which decision is hereto attached, marked Exhibit 34, being the decision referred to in paragraph 16, of complainant's bill.

Par. 59. That thereafter, pursuant to and in conformity with the said decision, Exhibit 34, a patent from the United States bearing date March 23, 1901, was duly issued for the tract involved, to-wit The Southwest Quarter of Section 3, Township 97, Range 42, in O'Brien County Iowa, to the defendant George W. Patterson as a good faith purchaser under Section 4 of the Act of March 3, 1887, a copy of which patent is hereto annexed, marked Exhibit 35.

Par. 60. That the said J. H. Pasco, and the plaintiff Roscoe Lyle, and the defendant George W. Patterson were, during all the
98 times hereinbefore mentioned, each citizens of the United States and of the State of Iowa, and that the Sioux City and St. Paul Railroad Company was, during all the times herein referred to, a corporation duly organized under the laws of the State of Iowa.

Par. 61. That in pursuance of the decree rendered in the case of the Chicago, Milwaukee & St. Paul Railway Company against the Sioux City & St. Paul Railroad Company, hereinbefore referred to, the lands involved in said action, including the tract in controversy herein, were duly partitioned between said companies, the tract in

controversy herein being duly assigned in severalty to the Sioux City & St. Paul Railroad Company. Said partition thereof was duly confirmed by said Circuit Court of the United States on October 28, 1886.

That on October 4, 1889, the Attorney General of the United States brought an action under the said act of March 3, 1887 for and on behalf of the United States as plaintiff, against the Sioux City & St. Paul Railroad Company and other defendants, in the Circuit Court of the United States for the Northern District of Iowa, Western Division, to recover the land in controversy, and other lands, aggregating 21,979.65 acres. That neither this defendant nor anyone through whom he claims title, excepting the said Sioux City & St. Paul Railroad Company, was made a party defendant or otherwise in said action, and was not a party thereto, either directly or indirectly.

That after the determination of the said suit between the said Chicago, Milwaukee & St. Paul Railway Company and the Sioux City & St. Paul Railroad Company hereinbefore referred to, involving the lands in the overlapping limits of their respective grants, and after the partition of the lands between the said companies, and the confirmation of said partition by the court in said action, as hereinbefore stated, the said Sioux City & St. Paul Railroad Company proceeded to sell and dispose of the lands allotted and set off to it in said partition proceeding, including about 21,000 acres thereof which had not been patented by the State of Iowa to said railroad company, and to issuance of patents to which had been enjoined in said action between said railroad companies, the land in controversy herein being a part of said unpatented lands to set off to said Sioux City & St. Paul Railroad Company; and from and after the time of the confirmation of said partition of said lands by said court, up to and including October 4, 1899, when the suit was so brought by the United States against said Sioux City & St. Paul Railroad Company as hereinbefore stated, the said Sioux City & St.

99 Paul Railroad Company in fact sold to private parties and individual purchasers the greater number of said lands so set off to it by the State of Iowa, and which lands had been patented by the United States to the State of Iowa for the use and benefit of said Sioux City & St. Paul R. R. Co.

That the said lands which had been so selected by the Sioux City & St. Paul Railroad Company within the limits of its grant in O'Brien County Iowa, and which had been patented by the United States to the State of Iowa, for the use and benefit of said Railroad Company as aforesaid, but which had not been patented by the State to said Company, were, by the proper officials of the State of Iowa and the counties in which said lands were situated, duly listed and assessed for taxation and taxed as follows: For the years 1873 to 1882 inclusive, they were assessed and taxed as the property of the Sioux City & St. Paul Railroad Company: but on account of the conflicting claims to said lands by the Sioux City & St. Paul R. R. Co. and the Chicago Milwaukee & St. Paul Ry. Co., the lands being within the overlapping limits of the grants to each of said two com-

panies, there was a question raised between the said two companies and the county as to the propriety of said lands being taxed as they had so been, and in 1884 the said controversy was settled by an agreement between the county and the said companies that the taxes for the years 1873 to 1882 inclusive, should be cancelled, and that the said Sioux City & St. Paul R. R. Co. should pay the taxes for the year 1883 and thereafter: and the said lands in odd-numbered sections of the overlapping limits of said grants within the limits of the said Sioux City & St. Paul R. R. Co., grant were assessed and taxed for the years 1883 to 1886 inclusive, some in the name of the said Sioux City & St. Paul R. R. Co. and others in the name of no person as owner, or to "unknown owners", and for the year 1887 twelve pieces thereof were assessed and taxed to the respective purchasers thereof from the said Sioux City & St. Paul R. R. Co., and the remainder thereof was assessed and taxed to the said Sioux City & St. Paul R. R. Co. and the said Sioux City & St. Paul R. R. Co., paid taxes in full thereon for the years 1883 1884 and 1885; said lands were sold for the taxes of 1886 at the tax sale of December 5, 1887, and were redeemed by said Sioux City & St. Paul R. R. Co., and the taxes thereon for the year 1887 were paid by the said Sioux City & St. Paul R. R. Co., on April 26, 1888; that from 1887 to 1896 the said lands were assessed and taxes to either the Sioux City & St. Paul R. R. Co. or the person or persons to whom it had sold respective parcels or tracts thereof, and in the instances where the said lands were assessed to individual purchasers from said company, they were in some cases paid in other defaulted, and where payment was defaulted the lands were sold for taxes not paid in the usual way at regular tax sales.

That after the passage of the Act of Congress of May 12, 1864, the United States at all times prior to the institution of the suit brought against the Sioux City & St. Paul R. R. Co., in October 1889 as hereinbefore stated, treated the lands mentioned and described in said grant, including the land in controversy herein, and all the lands, title to which was quieted in the United States as hereinbefore stated, as having passed under and by virtue of the said grant to the State of Iowa, for the use and benefit of said Railroad Company. That after the certification of the construction of said road according to the terms of the grant by the Governor of Iowa, as aforesaid, and prior to October 4, 1889, the said railroad company handled and sold said land, put sales agents in the field to sell the same, collected from various purchasers the purchase money thereof, in whole or in part, and exercised all the acts of ownership over the same, maintaining suits in the U. S. District Court in partition against the Chicago Milwaukee & St. Paul Ry. Co., as hereinbefore stated, and which involved said lands, and in said suits claiming that it was the owner thereof and obtained a decree in the U. S. Circuit court for the Northern District of Iowa, that said lands belonged to the said Sioux City & St. Paul R. R. Co., said decree being at length as hereinbefore set forth, and having commissioners duly appointed in said court and said lands involved therein partitioned and set off to said respective railroad companies and in severalty, the land in

controversy being set off to the said Sioux City & St. Paul R. R. Co., as its property; that said Sioux City & St. Paul R. R. Co., sold and [and] disposed of said land so set off to it in said suit, including the land in controversy, as the owner thereof, and caused the same to be assessed for taxation in the usual manner as the land of the said railroad company, and the same was so assessed; that prior to October 1889, the said Sioux City & St. Paul R. R. Co. had sold and disposed of practically all of said lands and the purchasers of a large part thereof had taken possession thereof made valuable and extensive improvements thereon, by breaking and cultivating the same, and in many cases by erecting buildings, fences, and planting groves and trees thereon, and otherwise improving the same: and said purchasers from said company caused the land so purchased by them to be assessed and taxed as their property, and a large number of said purchasers paid their taxes so assessed against said land, and

101 where they failed to so pay said lands were sold by the County at the usual and regular tax sales of land for delinquent taxes; and the said Sioux City & St. Paul R. R. Co., and the defendant herein and those under whom he claims title, paid taxes upon the land in controversy herein from year to year as owners thereof, and the said United States Government did not prevent, nor take any steps to prevent, nor interfere with the doing of any of the said things set forth in this paragraph until it brought its said action in October 1889, against the said Sioux City & St. Paul R. R. Co., as hereinbefore set forth. That during the period after the passage of the Act of the Legislature of Iowa in 1882 and 1884, as heretofore stated herein, and prior to said February 27, 1896 many and divers individuals applied to the local land office where the said lands were situated to enter the same under the homestead laws of the United States and said applications were in each instance refused, and the Department of the United States Government failed to recognize the same, and gave as reasons therefor that the said lands were within the limit of the said grant of May 12, 1864, and not subject to entry and the Commissioner of the General Land office of the United States and the Secretary of the Interior having been applied to during said time for information in regard to the status of said land by various parties, replied in such instances that said lands were embraced within the limits of said grant of May 12, 1864, and not subject to entry.

That after the rendition of the decree in 1895, quieting the title in the United States to the lands in O'Brien County aggregating 21,000 acres as hereinbefore set forth, and including the tract in controversy, and after said land had been open to entry, a large number of contests arose before the proper land department of the United States for the district in which said lands were situated between homestead applicants and the persons claiming under the Act of Congress of March 3, 1887, as purchasers thereof from said Sioux City & St. Paul R. R. Co.; and in said contests the said department of the Interior of the United States and all of its officers, including the various Registers and Receivers of the Land Offices at Des Moines Iowa, before whom such matters came, and the various

Commissioners of the General Land Office before whom such matters came, and the various Secretaries of the Interior before whom the same came, all held that the said Act of March 3, 1887, applied thereto and so construed such Act of March 3, 1887, as being applicable to the lands involved in said action brought by the United States against the Sioux City & St. Paul R. R. Co., as aforesaid; and the said officials determined such case so raised before them upon

its individual merits under the provisions of the said Act of 102 March 3, 1887, and applied said Act and its provisions to each of said cases. That after said suit by the United States against the Sioux City & St. Paul R. R. Co., in which decree was finally entered quieting the title of the United States in the said 21,000 acres of land, the United States alleged and maintained, in both the Circuit Court and the Supreme Court of the United States that the Act of Congress approved March 3, 1887 aforesaid, did apply to said lands and to the grants therein involved, which included the land in the controversy herein, and did apply to the grant of May 12, 1864, granting said lands to the State of Iowa, to aid in the construction of a railroad from Sioux City to the south line of the State of Minnesota as hereinbefore set forth, the benefit of which Act was conferred by the State of Iowa, by proper enactments as hereinbefore set forth upon the said Sioux City & St. Paul R. R. Co.

That the Secretary of the Interior patented to the State of Iowa, for the use and benefit of the said Sioux City & St. Paul R. R. Co., under said grant, lands as follows;

On October 10, 1872.....	191,464.04	acres
On June 17, 1873.....	205,374.76	"
On January 25, 1875.....	10,911.41	"
On June 4, 1877.....	160.	"

407,910.21 acres

Less forty acres patented twice..... 40

407,870.21 acres.

Of these lands there were

In the granted limits.....	212,067.66	A.
In the indemnity limits.....	195,842.55	A.

That the State of Iowa certified or patented to the Sioux City & St. Paul R. R. Co., of the above lands as follows:

Within the granted limits.....	186,186.77	acres
In the indemnity limits.....	136,226.04	"

322,412.81 acres.

That in the suit heretofore referred to between the Sioux City Company and the Milwaukee Company there was decreed to the Milwaukee Co., from said lands as follows;

Of the lands patented by the State to the Sioux City Co.

Within the granted limits.....	14,640.06 acres.
Within the indemnity limits.....	27,047.46 acres.
	<hr/> 41,687.52 acres.

103 (These lands were conveyed by the Sioux City Company to the Milwaukee Company in accordance with decree in said suit.)

Of lands not patented to the Sioux City & St. Paul Co.:

Within the granted limits.....	10,629.80 acres
Within the indemnity limits.....	27,118.09 acres
Total unpatented lands awarded Milwaukee.....	<hr/> 37,747.89 acres

(These lands were conveyed by the State to the Milwaukee Co., after, and in obedience to said decree.)

That on January 12, 1887, the Governor of Iowa reconveyed to the United States as directed by said Act of the General Assembly of Iowa, approved March 27, 1884, of said lands conveyed to the State and not patented to the Company 26,017.33 acres, lying in Plymouth Sioux and Woodbury Counties.

Total Patented to State.....	407,870.21 acres
Patented by State to Sioux City Company.....	322,412.81 acres
Remainder left in hands of State.....	<hr/> 85,457.40 acres
Unpatented lands relinquished to U. S.	
S.	26,017.33 A.
Unpatented lands awarded to Milwaukee Co.	37,747.89 A.
	<hr/> 62,765.22 acres

Lands left in hands of State being those title to which was quieted in the U. S.	<hr/> 21,692.18 acres
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Total patented to the Sioux City Co.	322,412.81 acres
Patented Lands awarded to Mil. Co.	41,687.52 acres

Remainder being lands actually received by the Sioux City Co. under its grant.....	<hr/> 280,725.29 acres
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That according to the records of the General Land Office there are, within the common granted limits of the Sioux City & Milwaukee Companies, 70,345.67 acres in odd numbered sections.

That of the said lands there were patented to the State of Iowa for the Sioux City Co., 50,539.73 acres.

That prior to the decision of the case of Knepper v. Sands, filed by the Circuit Court of the United States, on May 31, 1904, and which opinion is reported in Vol. 194 U. S. Reports, page 476, and subsequent to the decision of the Circuit Court of the United States in the case of the United States v. Sioux

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City & St. Paul R. R. Co., which was filed in October 1895, hereinbefore referred to, by which the title to said lands was quieted in the United States to the extent of about 21,000 acres, as hereinbefore stated, there had been no decision by the United States Court involving any of said lands or the rights of the claimants thereto, nor [constructing] the law in reference to the application of the Act of March 3, 1887, aforesaid, thereto, except only the cases of Linksweller v. Schneider, decided July 3, 1899 by this Court, and reported in Vol. 95, Fed. Rep., 203, and the case of Towe v. Manly, decided by the same Court on December 6, 1901, and reported in Vol. 110, Fed. Rep. page 24, and the case of Benner v. Lane, decided by the same Court on June 30, 1902, and reported in Vol. 116 Fed. Rep. page 467; and the case of Brett v. Meisterline decided by the same Court on December 3, 1902, and reported in Vol. 117 Fed. Rep. page 768, and the case of Sands v. Knepper, decided by the same Court on September 6, 1901, and which was not officially reported. That all of said cases were decided by the Circuit Court of the United States for the Northern District of Iowa and said Court in each of said cases recognized considered and construed the law to be that the said grant of May 12, 1864, to the State of Iowa, for the construction of said railroad as hereinbefore stated, had not been adjusted at the time of the passage of the Act of Congress of March 3, 1887 and recognized, construed and held that said Act of March 3, 1887, applied to the said land and to the said grant, and recognized, considered and construed the law to be that one could be a good-faith purchaser of said lands under the provisions and within the intent of said Act of March 3, 1887 purchasing from the Sioux City & St. Paul R. R. Co., under the facts as existing in relation to said land and within the meaning of the Act of March 3, 1887, and decided each of cases upon its merits under the law as so considered, applied and construed by them; the case of Linksweller v. Schneider and Brett v. Meisterline, supra, being decided in favor of the purchasers from said railroad company claiming under the Act of March 3, 1887, as good-faith purchasers, and the remainder of said cases being decided in favor of the homestead claimants as against purchasers' claims, claiming under the Act of March 3, 1887.

That the record title to the land in controversy, as shown by the official records in the office of the Recorder of Deeds in and for the County of O'Brien and State of Iowa, shows the record therein of the patent of the United States to the State of Iowa to the
105 lands embraced in said grant of May 12, 1864 as aforesaid, including the land in controversy, for the use and benefit of the said Sioux City & St. Paul R. R. Co., which patent is duly indexed and recorded in the deed records of the County of O'Brien as aforesaid, and was so recorded prior to the time that this defendant and those through whom he purchased said land at the time the said Sioux City & St. Paul R. R. Co., by contract as aforesaid, sold the same to the said purchasers, to-wit:

from whom this defendant procured assignment of contract as in this stipulation referred to.

That J. H. Pasco and the defendants herein at the times of their

respective purchases of the land in controversy were each citizens of the United States and duly qualified to purchase and hold lands in the State of Iowa, and to hold and enter lands under the laws of the United States, that the said parties paid taxes on said lands from and including the year 1887, and paid all sums due said railroad company under said contract as the same fell due until the said Company refused to receive further payments because its title thereto was questioned in the said suit brought by the United States against said railroad Company in October 1889, as hereinbefore stated. That the defendants have paid all taxes levied and assessed upon said land from and after the time the patent was issued by the United States to the defendant George W. Patterson.

That at the time the said J. H. Pasco purchased the said tract of lands in controversy from the Sioux City & St. Paul Railroad Company he paid, or contracted to pay, the actual, fair, reasonable cash value of said land at said time; and at the time the defendant Patterson purchased the said land from the said Pasco, he paid, and contracted to pay, the fair, reasonable value of the land to the said Pasco; and that at the time the defendants Smith and Smith and Beacom purchased said land they each paid, and contracted to pay the fair, reasonable market value of said land.

That this action is the only one ever brought by the plaintiff herein, or by the intervenor, in any Court to set aside the patent issued by the United States to the defendant Patterson, or to question the decisions upon which said patent was issued and based, and they, and neither of them, have taken any steps before the Land Department of the United States in regard to the land in controversy other or different from that hereinbefore recited in this agreed stipulation of facts.

That on the 21st day of June 1887, the said J. H. Pasco purchased the land in controversy from the Sioux City & St. Paul Railroad Company, less one acre in the southwest corner of said quarter section, by written contract, paying thereon at the time the sum of \$80, and according to the terms of said contract \$167 became due on January 1, 1888, and \$357.40 became due on January 1, 1889, and the other deferred payments were to be made in equal installments on the first day of January of each year until the full purchase price of \$2,146.50 was paid.

That on the 17th day of July 1889, the defendant, George W. Patterson purchased the said land of said Pasco, receiving a written assignment thereof in the name of A. and G. W. Patterson. That A. Patterson was the father of G. W. Patterson, the defendants herein; and who had died prior to the time of the hearing before the Register and Receiver of the local Land office at Des Moines Iowa, and at that time the defendant George W. Patterson was the sole owner of said contract with the railroad company, and that at the time of said hearing the said defendant Patterson had paid the said railroad company upon said contract the sum of \$600 that after the purchase of said land by Pasco he broke and cultivated the same until July 17, 1889, when he sold and assigned the said contract of purchase to A. and G. W. Patterson in consideration of the payment of \$800; that from July 17, 1889, the said George W. Patterson

son farmed, cultivated and occupied said premises, by tenant, until he sold and conveyed the same to the defendants Smith and Smith.

That at the time the said J. H. Pasco purchased the said land from the Sioux City & St. Paul Railroad Company and at the time of the purchase thereof by A. and G. W. Patterson, they each believed in good faith that the said land had been earned by the said railroad company. That they each knew that the said land was within the ten-mile limits, of the said railroad constructed by the Sioux City & St. Paul Railroad Company, and within the ten mile limits of the line of construction, as shown by the plat of definite location, which plat has hereinbefore been referred to in this stipulation, and they each knew that the said railroad had in fact been constructed from the south line of the State of Minnesota to LeMars, Iowa, and that said road had been constructed and was in actual operation from St. Paul Minnesota, to LeMars Iowa, and the cars and trains of said Railroad Company had been for many years operated from St. Paul Minnesota, to Sioux City Iowa, the same running over the railroad of the Illinois Central Railroad Company from LeMars to Sioux City Iowa.

That each of the defendants knew that the United States Government had executed to the State of Iowa a patent to the land
107 in controversy, together with the lands embraced within the said grant of May 12, 1864, to the State of Iowa, for the use and benefit of the Sioux City, and St. Paul Railroad Company, which said patent had been recorded in the office of the Recorder of Deeds of O'Brien County, Iowa, previous to the purchase by the said Pasco of said land from said railroad company. That neither of the said defendants knew that the said railroad company has sold all of the land it had earned at the time of their said purchases, nor did they, or either of them, know that the said railroad company had received indemnity lands by patent from the State of Iowa of sufficient quantity, along with other lands that had been patented to said railroad company by the State, to equal their entire earnings by reason of the construction of said railroad to Le Mars Iowa, and they each knew that there were no outstanding homestead or pre-emption claims.

It is also stipulated that the defendants knew that the Governor of the State of Iowa had certified the completion of said railroads for five 10 mile sections, as hereinbefore alleged. That the said Pasco and the defendants herein at the times of their respective purchases, each understood and believed that all of the odd numbered sections within the 10 mile limits of said railroad as located on the map of definite location of said railroad, were and became actually earned as soon as the road was completed and constructed beyond the south line of each respective section of land; that at the time of their respective purchases they each believed that the said land in controversy had been earned by the said railroad company, and that the same belonged to the said railroad company, and neither of said parties knew that title thereto had been forfeited or had reverted in the United States; and they each believed at the time of their respective purchases that they were acquiring good and perfect title by means of such purchase from said railroad company and

through their grantors. That from and after the execution of said contract of purchase by Pasco, each installment of the purchase price was paid promptly when due until the said railroad company entered into an extension agreement with the *the* defendant Patterson, extending the time of payment to the date ninety days after the suit then pending brought by the United States against the said railroad company to quiet title to said land as hereinbefore stated, had been finally determined, and no default has been made by said parties, or either of them, in any payments upon said contract.

That since the patent to the land inc controversy was issued to the defendant Patterson, the said land has at all times since been
108 taxed by the State of Iowa, and the defendants have annually paid the taxes thereon in the sum of about fifty dollars per annum, and all of said acts of possession, occupation, cultivation and payment of taxes have been in good faith upon the part of said Pasco and the defendants herein, acting upon the belief that they were the absolute owners of said land, and that they have good, absolute fee title thereto under an *by* *by* virtue of the contract of purchase and the proceeding of the Land Department of the United States, and under and by virtue of the patent issued by the United States to the defendant Patterson, and the conveyance by Patterson by warranty deed to the defendants Smith and Smith, and by the conveyance by warranty deed from the defendants Smith and Smith to the defendant Beacom.

It is further stipulated that the said defendant nor the intervenor have in fact paid any homestead entry fee to the Government of the United States, nor have the applications of either of them to enter said lands as a homestead been received or accepted by any officer of the United States duly authorized so to do, but it has at all times been rejected, and that the only tender or offer of entry fee, or tender or offer of application to enter said land as a homestead were the tenders made by the complainant and intervenor in the proceedings before the local Land Office at Des Moines Iowa, and at that time no entry fees were accepted and no other steps or action have been taken by the complainant or intervenor herein toward procuring title to said land, or to perfect their said entry, or either of them, under the homestead laws other than the proceedings in the Land Department hereinbefore recited, and the commencement of this action which action was commenced on May 24, 1901, by the complainant the intervenor filing his petition of intervention May 5, 1902.

That since the patent was issued to the defendant Patterson, and since the final decision of the Secretary of the Interior holding that the defendant Patterson was a good faith purchaser under the Act of March 3, 1887, the defendant Patterson, and the defendants Smith and Smith and Beacom, claiming by and through him have been in the actual possession of the land, have made payments of taxes thereon annually, of all of which the complainant and intervenor had actual knowledge from the time of the decision of the Secretary of the Interior up to the time of the commencement of this action; that the complainant and intervenor knew that the defendants were cultivating and improving the said land and treating

the same as their absolute property; that they knew of the sale and conveyance of said land from the defendant Patterson to the
 109 defendants Smith and Smith and the sale of the defendants Smith and Smith to the defendant Beacom; and knowing said facts, at no time after the final decision of the Secretary of the Interior to the commencement of this action, did the complainant or intervenor make any claim to any of said defendants, or make known to any of the defendants that he or they still claimed the right to enter said land as a homestead, or that he or they claimed any right, title or interest in or to said land, or that he or they would, until the commencement of this action and filing of said petition of intervention, claim or assert any claim to said land.

That the said Pasco and the defendants herein are citizens of the United States over the age of 21 years, and were of age and citizens of the United States prior to March 3, 1887, and Pasco was qualified in all respects to enter said land under the homestead laws of the United States, and is still so qualified to enter said land under the homestead laws; the qualification of the other parties is as shown by the record hereof.

That upon the defendant Patterson being awarded said land upon the final decision of the Secretary of the Interior, he in good faith paid to the Government of the United States the full purchase price thereof; and the sum then demanded of him from the United States, to wit the sum of \$400 under the provisions of the Act of March 3, 1887, and the Government of the United States accepted the said sum of \$400 under said provisions of the Act of March 3, 1887, and which said money the Government received as a consideration for the conveyance of said land to the said defendant under and by virtue of the interpretation provisions of the Act of March 3, 1887, and under and by virtue of the interpretation of the provisions of said Act by the Department of the Interior of the Government, and which said money and purchase price the Government still has and retains, and the same has not been tendered back nor paid back to the defendant Patterson or to anyone else, and the Government has taken no steps to revoke said patent, and has indicated in no way its intention to in any wise complain of or avoid the said sale and conveyance to the defendant Patterson.

Each and every exhibit referred to in this stipulation is hereby made a part of this agreed statement of facts, and where copies of a document are attached, the same are to be treated as of the same force and effect as if the originals were hereto attached, duly authenticated, proved and certified. It is also stipulated and
 110 agreed that the exhibits attached to the bill of complaint and the exhibits attached to the answer and the exhibits attached to the petition of intervention are each to be treated and considered as exhibits to and attached to this statement of facts, as a part thereof, and said exhibits and each of them are conceded to be true copies of the originals.

That the Receiver's receipt to the land in controversy, and upon which patent issued to the defendant Patterson, was issued to him on July 29, 1900 was filed for record, in the office of the recorder of deeds of O'Brien County, Iowa, on the 31st day of January 1901, at

8 o'clock A. M., and recorded in book 38, page 132 of the records of the office of the Recorder of deeds of O'Brien County Iowa; that soon thereafter a patent issued to the defendant Patterson from the United States to the land in controversy, which was duly recorded in the office of the recorder of deeds of O'Brien County, Iowa; and thereafter on January 30, 1901, the defendant Patterson sold, transferred and deeded said land in controversy to the defendant T. H. Smith and W. M. Smith, jointly, in consideration of the sum of \$6360 in hand paid, and which said deed was filed for record in the recorder's office on January 31, 1901 and recorded in book 38, page 133 of the records of O'Brien County Iowa. That on March 31, 1901, said defendants T. H. Smith and W. M. Smith, and wives, sold and transferred and deeded the premises in controversy to the defendant Thomas Beacom by warranty deed in consideration of the sum of \$6600. in hand paid, which said deed was duly recorded in the office of the recorder of deeds of O'Brien County, Iowa, April 25 1901, and recorded in book 38, page 199 of the records of said office. That said warranty deeds contained the usual covenants of warranty and were made in good faith upon the part of the grantors and grantees in each instance and for a full and fair market value of the land in controversy.

That the said patent to the said Patterson was filed for record in the office of the recorder of deeds of O'Brien County, Iowa, on April 15th, 1901 at 8 o'clock P. M. and recorded in book 38, page 223 of the records of said office.

That at the time the defendant Beacom purchased the land in controversy from the defendants Smith and Smith, and at the time he paid the \$6600 dollars' consideration of the sale of the same, he believed in good faith that he was receiving the full fee simple title to said land, and that his said grantors had the right to convey to him the full fee simple title thereto, and he did not then
111 know or think [that] the complainant herein or the intervenor had or claimed any right, title or interest in or to said land.

That no notice whatsoever of the pendency of the action was ever given to or made a matter of record in the district court of O'Brien County Iowa, or in the recorder's office of said county, and on January 15, 1904, the defendant Beacom believing that he had full right so to do, executed a mortgage to the Mutual Life Insurance Co. of Milwaukee, Wisconsin, upon the land in controversy, securing the payment of a loan of \$3800, that day made by the company to him, due in 5 years from date and drawing 5% interest per annum; and that said mortgage was filed for record in the office of the recorder of O'Brien County Iowa, February 20, 1904, and recorded in book 49, page 24, of the mortgage records of said county, and that the same is unpaid; and that so believing on February 1, 1904, defendant Beacom executed a second mortgage upon the land in controversy to the Empire Loan & Investment Co., of Sheldon, Iowa, for \$2,000 to secure the payment of that sum borrowed from said company on said date, due in 3 years at 8% interest per annum; that said mortgage was duly filed for record in the

office of the recorder of deeds of O'Brien County, Iowa, March 9, 1904, and recorded in book 45, page 229. That said mortgage is unpaid.

That the land in controversy is within one mile of said line of railroad as constructed and operated by the Sioux City & St. Paul Railroad Company.

It is agreed that all statements made herein as to the amount and value of work done and improvements made upon the land in controversy shall refer to and be binding in this trial alone, and shall not be binding upon any of the parties in any other or future proceedings.

W. D. BOIES,
Solicitor for Defendant.

MADISON B. DAVIS,
THOS. G. HENDERSON,
Solicitors for Plaintiff.

_____,
Solicitors for Intervenor.

EXHIBIT No. 1.

An Act for a Grant of Lands to the State of Iowa, in Alternate Sections to Aid in the Construction of a Railroad in Said State.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there
112 be, and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of a railroad from Sioux City, in said State to the south line of the State of Minnesota, at such point as the said state of Iowa may select between the Big Sioux and the west fork of the Des Moines river, also, to said State for the use and benefit of the McGregor Western Railroad Company for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main Street, South McGregor, in said State, in a westerly direction, by the most practical route, on or near the forty-third parallel of north latitude, until it shall intersect the said road running from Sioux City to the Minnesota State Line, in the County of O'Brien, in said State, every alternate section of land, designated by odd numbers, for ten consecutive sections in width on each side of said roads; but in case it shall appear that the United States have, when the lines or routes of said roads are definitely located sold any section, or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid, from the public lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the right of homestead settle-

ment or preemption has attached as aforesaid, which lands thus indicated by odd numbers and sections, by the direction of the Secretary of the Interior, shall be held by the State of Iowa for the use and purposes aforesaid, Provided, That the land so selected shall in no case be located more than twenty miles from the lines of said roads; Provided further, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purposes of aiding in any object of internal improvement, or other purposes, whatever, be and the same are hereby reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the routes of said roads through such reserved lands, in which case the right of way shall be granted, subject to the approval of the President of the United States.

Sec. 2. And be it Further Enacted, That the sections and part of sections of land which by such grant shall remain to the United States within ten miles on each side of said roads, shall not be sold for less than double the minimum price of public lands when
113 sold, nor shall any of said lands become subject to sale at private entry until the same shall have been first offered at public sale to the highest bidder at or above the minimum price as aforesaid.

Provided, That actual bona fide settlers under the pre-emption laws of the United States may, after the proof of settlement, improvement and occupation, as now provided by law, purchase the same at the increased minimum price; And provided also, that settlers under the provisions of the homestead law, who comply with the terms and requirements of said act, shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding.

Sec. 3. And be it further enacted, That the lands hereby granted shall be subject to the disposal of the Legislature of Iowa, for the purposes aforesaid, and no others; and the said railroads shall be and remain public highways for the use of the government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States.

Sec. 4. Be it Further Enacted that the lands hereby granted shall be disposed of by said State, for the purpose aforesaid only, and in manner following, namely; When the Governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a good, substantial and workmanlike manner, as a firstclass railroad, then the Secretary of the Interior shall issue to the State, patents for one hundred sections of land, for the benefit of the road having completed the ten consecutive miles as aforesaid. When the Governor of said State shall certify that another section, of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said state in like manner, for a like number; and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are, from time to time, made as aforesaid, additional sections of land shall be

patented as aforesaid, until said roads, or either of them are completed, when the whole of the lands hereby granted shall be patented to the State for the uses aforesaid and none other; Provided, That if the said McGregor Western Railroad Company, or assigns, shall fail to complete at least twenty miles of its said road during each and every year, from the date of its acceptance of the grant provided for in this act, then the State may resume said grant, and

114 so dispose of the same as to secure the completion of a road on said line and upon such terms, within such time as the State shall determine: Provided further, That if the said roads are not completed within ten years from their several acceptance of this grant the said lands hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of the said roads within such time, not to exceed five years, and upon such terms as the State shall determine and provided further, That said lands shall not in any manner be disposed of or incumbered except as the same are patented under the provisions of this act; and should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States.

Sec. 5. And Be It Further Enacted, That as soon as the Governor of said State of Iowa shall file or cause to be filed with the Secretary of the Interior maps designating the routes of said roads then it shall be the duty of the Secretary of the Interior to withhold from market the lands embraced within the provisions of this act.

Sec. 6. And Be It Further Enacted, That the United States mail shall be transported on said roads and branch, under the direction of the post office department, at such price as Congress may by law provide. Provided, That until such price is fixed by law, the Postmaster General shall have power to fix the rate of compensation.

Approved May 12th, 1864.

EXHIBIT No. 2.

Chapter 124.

Grant of Lands to Sioux City & St. Paul Railroad Company."

An Act to accept of the Grant and carry into execution the Trust conferred upon the State of Iowa, by an Act of Congress, entitled "An Act for a grant of lands to the State of Iowa in alternate section to aid in the construction of a railroad in said State".

Section 1. Be It Enacted by the General Assembly of the State of Iowa, That the lands, rights, powers and privileges conferred upon the State of Iowa by the Act of Congress entitled "An Act for a grant of land to the State of Iowa in alternate sections, to aid in the construction of a railroad in the State of Iowa," approved May 12 1864 be, and the same are hereby accepted upon the terms, conditions and restrictions contained in said Act of Congress.

115 Sec. 2. That so much of the lands, interests, rights, powers, and privileges, as are or may be granted and conferred in pursuance of the Act of Congress aforesaid, for the purpose of aiding in the construction of a railroad from Sioux City, in the State of Iowa, to the south line of the State of Minnesota, at such point as the Said State of Iowa may select between the Big Sioux and the west fork of the Des Moines River be, and are hereby disposed of, granted and conferred upon the Sioux City and St. Paul Railroad Company, a body corporate existing under and by virtue of the laws of the State of Iowa.

Sec. 3. That said Company shall locate and definitely fix the line of route of said road as soon as practicable after the passage of this act, and shall file a map showing such line or route in the office of the Governor of the State of Iowa, and also in the office of the Secretary of the State of Iowa; and it shall be the duty of the said Governor, after affixing his official signature thereto, to file or cause to be filed, such map in the office of the Secretary of the Interior. But the location of such line of route however, shall be considered final only so far as to fix the limit and boundary within which lands may be selected under and by virtue of said Act of Congress.

Sec. 4. That said road shall be constructed upon the usual gauge of other first class roads in this state, and the iron used in the track shall be of approved quality and pattern: and the said road shall be constructed and finished in a style and of a quality equal to the average of other first class western roads; and when the said roads shall be intersected by any other railroad hereafter constructed, it shall be the duty of the Company receiving the benefits of this act to furnish all proper and reasonable facilities and to join such other company in making all necessary crossing, turnouts, sidings and switches, and other conveniences for the transportation of all freight and passengers over their roads, and the rate of transportation shall not in any case exceed the regular tariff of charges on said road.

Sec. 5. The said Company shall assent to and accept the grant by this act conferred, by a written instrument under the seal of such corporation, and signed by its President and Secretary, and shall file the same in the office of the Secretary of State of the State of Iowa within six months after the passage of this act.

Sec. 6. The said Company is hereby authorized and empowered to select and designate the point upon the south line of the State of Minnesota, to which the said road shall be built, between the
116 Big Sioux and the "west fork" of the Des Moines river, as designated in said act of Congress.

Sec. 7. The company accepting the provisions of this act shall at all times be subject to such rules, regulations and restrictions of rates for the transportation of passengers and freight as may be enacted and imposed by the General Assembly of the State of Iowa, not inconsistent with the provisions of this act and the act of Congress making the grant aforesaid.

Sec. 8. The said company accepting the grant of land under the provisions of this act, shall take the same with the conditions imposed and the terms provided by this act, and in no event shall said

company have any claim or recourse upon the State of Iowa by reason of the conditions imposed by this act.

Sec. 9. All persons who, at the time this grant was made, hold valid claims by actual occupation and improvement upon any of the lands embraced in said grant, shall be protected in the same and entitled to purchase and enter the same upon the terms and conditions provided in Sections 1308 and 1309 Chapter 55 of the revision of 1860.

Sec. 10. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Daily State Register, a newspaper published in Des Moines, and the Sioux City Journal, a newspaper published in Sioux City, said publication to be without expense to the state.

Approved April 3d, 1866.

I hereby certify that the foregoing act was published in the Daily State Register, April 22nd, 1866 and in the Sioux City Journal April —th, 1866.

JAMES WRIGHT,
Secretary of State.

EXHIBIT No. 3.

An Act to accept the grant of land to the State of Iowa, made by Act of Congress, May 12th, 1864, and to carry out the provisions of said Act, entitled "An Act for a grant of land to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State."

Section 1. Be It Enacted by the General Assembly of the State of Iowa, That the lands, rights, powers, duties, and trusts conferred upon the State of Iowa by an Act of Congress, approved July 12th, 1864, entitled "An Act for the grant of land to the state of
117 Iowa, in alternate sections, to aid in the construction of a railroad in said State," are hereby accepted by said State, upon the terms, conditions and restrictions contained in said Act of Congress.

Sec. 2. Whenever any lands shall be patented to the State of Iowa, in accordance with the provisions of said Act of Congress, said lands shall be held by the State in trust for the benefit of the Railroad Company as shall be ordered by the Legislature of the State of Iowa, at its next regular session, or at any session thereafter.

Sec. 3. This Act, being deemed by the General Assembly of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and Iowa Homestead, papers published at Des Moines Iowa. Approved April 20, 1866.

I hereby certify that the foregoing act was published in the Iowa State Register on the 2nd day of May 1866 and in the Iowa Homestead on the 10th day of May 1866.

JAMES WRIGHT,
Secretary of State.

EXHIBIT No. 4.

An Act to amend an Act approved April 20th, 1866, entitled, "An Act to accept the Grant of Land to the State of Iowa, made by Act of Congress of May 12th, 1864, and to carry out the provisions of said Act, entitled 'An Act for a Grant of Land to the State of Iowa, in alternate sections, to aid in the Construction of a Railroad in said State'," and to make effectual the acceptance by the State of Iowa to said Grant of land.

Whereas, in said Act of the General Assembly of the State of Iowa, approved April 20th, 1866, the word "July" occurs in the first section thereof by mistake, instead of the word "May" Therefore,

Section 1. Be It Enacted by the General Assembly of the State of Iowa, That said Act, approved April 20th, 1866, is hereby amended by striking out of the first section thereof the word "July" and by substituting instead thereof the word "May", so that the date of approval of the Act of Congress therein referred to will be correctly stated as having been May 12th, 1864, and which was intended to have been therein stated; and the acceptance of said grant of land, intended to have been made by said Act approved April 20th, 1866, is hereby ratified and confirmed.

118 Sec. 2. This Act, being deemed by the General Assembly of immediate importance, shall take effect and be in force from and after its publication in the daily Iowa State Register and Iowa Homestead, newspapers published at Des Moines, Iowa.

Approved March 24th, 1868.

I hereby certify that the foregoing act was published in the Daily Register, March 27th, 1868, and in the Iowa Homestead, April 1st, 1868.

ED WRIGHT,
Secretary of State.

EXHIBIT No. 5.

OFFICE OF THE SIOUX CITY & ST. PAUL RAILROAD COMPANY,

SIOUX CITY, IOWA, Sept. 19, 1866.

At a meeting of the Board of Directors of the Sioux City & St. Paul Railroad Company, held this day, at Sioux City, Iowa, the following instructions were unanimously adopted:

"Resolved, That the Sioux City & St. Paul Railroad Company, hereby assent to and accept the provisions of an act enacted by the General Assembly of the State of Iowa, and approved April 3rd, 1866 entitled "An Act to accept of the Grant and carry into execution the trust conferred upon the State of Iowa by an Act of Congress entitled "An Act for a grant of Lands to the State of Iowa in alternate sections to aid in the Construction of a Railroad in said State from Sioux City in said State of Iowa to the south line of the

State of Minnesota, between the Big Sioux and the West Fork of the Des Moines River," approved May 12th, A. D. 1864.

Resolved, That the President and Secretary of the Sioux City & St. Paul Railroad Company be and they are hereby required to affix thereto their signatures and the Seal of said Company to the above resolutions and have the same filed in the office of the Secretary of the State of Iowa forthwith."

(SEAL)

J. C. C. HOSKINS, *President.*

SIoux CITY & ST. PAUL RAIL-
ROAD COMPANY.

Attest.

N. C. HUDSON, *Secretary.*

Sioux City & St. Paul Railroad Company.

STATE OF IOWA,

Office of Secretary of State, ss:

Filed in this office this 25th day of September A. D. 1866.

JAMES WRIGHT,
Secretary of State.

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EXHIBIT No. 6.

Consolidated map.

EXHIBIT No. 7.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., July 16, 1867.

SIR: Herewith I transmit a map, duly authenticated, showing the definite location of the Sioux City & St. Paul Railroad.

This map is accepted and will become the basis for the adjustment of the land grant made to the State of Iowa to aid in the construction of this road by the act approved May 12, 1864. You will issue the necessary instructions to local land officers to withdraw the land so granted to the State.

Very respectfully, your ob't servant,

G. H. BROWNING,
Secretary.

John John S. Wilson, Commissioner of the General Land Office.

EXHIBIT No. 8.

Certified copy of Map; Said Map, from the nature of it, it is impossible and impracticable to attach hereto.

EXHIBIT No. 8-B.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, August 20, 1867.

Register and Receiver, Sioux City Land Office, Iowa:

GENTLEMEN: The Sioux City and St. Paul Railroad Company of Iowa under the Act of Congress approved May 12th, 1864 Statute Vol. 13 P. 72, have filed an authenticated map of the survey and location of their road from Sioux City to a point on the Southern boundary line of Minnesota in township forty-one.

Enclosed is a diagram showing by green line the 10 mile limits of the grant "inplace" so far as the same falls to said road in your district with 10 additional miles indemnity limits, as indicated by yellow line to make up the indemnity.

You are hereby directed to withhold from sale or other disposal all the odd numbered sections with- said 10 miles on each side 120 of the roads, and also within the additional 10 miles indemnity limits. The Register will proceed to at once lay down distinctly in pencil on the township plats the limits of the line of route, with the 10 mile limits "in place" and the 10 mile indemnity limits, then make the proper notes showing the odd sections to be reserved.

The vacant undisposed of odd numbered sections within the 10 miles limits of said road, as indicated in the diagram insure "in place" to the State for said Company, except wherein ther- exists pre-emptions having prior inceptions.

In virtue of the Act of Congress approved March 27, 1854, Statutes Vol. 10, P. 202, the even sections within the granted limits are subject to preemptions at \$2.50 per acre, and must be dealt with accordingly, and in like manner under the Homestead law which reduces the quantity to 80 acres.

This order will take effect from the date of its reception at your office, and you will advise this office of the precise time it may be received by you.

Respectfully,

Your Ob't Servant,

JOS. S. WILSON,
Commissioner.

EXHIBIT No. 8-C.

D
8-5907

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S. S. M.
C. M. V.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., April 2, 1889.

I, S. M. Stockslager, Commissioner of the General Land Office, do hereby certify that the annexed copy of Commissioner's letter of August 26, 1867, to the local officers at Sioux City, Iowa, ordering a

withdrawal of lands for the Sioux City & St. Paul R. R. Co., is a true and literal exemplification from the record thereof in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.]

S. M. STOCKSLAGER,
Commissioner of the General Land Office.

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EXHIBIT 8-D.

F

4-207-a

S. S. M.
W. C. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., Feby. 17, 1890.

I, Lewis A. Graff, Commissioner of the General Land Office do hereby certify that the annexed diagram is a true and correct copy of the diagram prepared by this office showing the limits of the grant by Act of May 12, 1864, to the State of Iowa, for the Sioux City and St. Paul Railroad Company, a copy of which was transmitted to the Register and Receiver of the local land office at Sioux City, Iowa, with Commissioner's letter of August 26, 1867, directing a withdrawal of the lands.

In Testimony Whereof, I have hereunto subscribed my name and caused the Seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.]

LEWIS A. GRAFF,
Commissioner of General Land Office.

EXHIBIT 8-E.

Supreme Court of the United States.

I, James H. McKenney, Clerk of the Supreme Court of the United States do hereby certify that the annexed is a true copy of the diagram marked "Exhibit 8" and papers annexed thereto, in the case of The Sioux City & St. Paul R. R. Co. et al., Appellants vs. The United States No. 20, October Term 1895, as the same remains upon the files of said Supreme Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court, at the City of Washington, this 28th day of February A. D. 1900.

[SEAL.]

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

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EXHIBIT 9.

U. S. LAND OFFICE,
SIOUX CITY, IOWA, *September 2nd, 1867.*

Hon. Commissioner, Gen'l Land Office.

SIR: Your letter of August 26th ult., was received this morning, with map of the Sioux City and St. Paul Railroad, Your instructions in regard to it have been complied with.

I am very respectfully,
Your Ob't Servant,

JOHN CLOGHORN,
Register.

Re'd Sept. 2nd, 1867.

(Endorsed:) Land Office Sioux City, Iowa, Sept. 2nd, 1867, H-12, 03 Acknowledging Rec't of Letter of 26th ult. with Map of St. Paul R. R. John Cloghorm, Register.

EXHIBIT 10.

OFFICE CHIEF ENGINEER,
SIOUX CITY & ST. PAUL R. R. CO.
ST. PAUL, *November 15th, 1872.*

I hereby certify that the Sioux City and St. Paul Railroad Company has completed its road from its connection with the St. Paul & Sioux City Railroad at the north line of the State of Iowa, commencing near the Southwest corner of Sec. 31, T. 101, R. 40 at the Southern line of the State of Minnesota, thence by the most direct and eligible route to Le Mars in Sec. 18, T. 92, R. 45 in the State of Iowa to total distance of main line of fifty-six and one-fourth ($56\frac{1}{4}$) miles; also main track and side track of Sioux City about two (2) miles in length, I further certify, that all of said line of road is constructed and completed in a good, substantial, workmanlike manner as a first-class railroad. The said road is constructed upon the usual gauge of other first-class railroads in the State of Iowa and the iron used in the track is of approved quality and pattern, and that said road is constructed and finished in a style and of a quality equal to the average of other first-class, western roads,—The first ten miles of the above road commencing at the Minnesota State line were completed and cars running thereon prior to June 16th, 1872, the second ten miles next south thereof were completed and cars running thereon prior to June 29th, 1872; the third ten miles south thereof were completed and cars running thereon prior to July 15th, 1872; the fourth ten miles next south thereof were completed and cars running thereon prior to August 10th, 1872; the fifth ten miles next south thereof were completed and — were running thereon prior to September 10th, 1872, and the remainder of said road to Le Mars was completed and cars running thereon prior

to September 25th, 1872, and that this map correctly shows the course of said road as constructed and its connection with the lines of the public surveys.

J. W. BISHOP,
Chief Engineer.

Sworn and subscribed to this fifteenth day of November 1872,
before me.

[SEAL.]

C. A. HAMILTON,
Notary Public.

EXHIBIT 11.

It is hereby certified that J. W. Bishop is the Chief Engineer of the Sioux City and St. Paul Railroad and that the location of the road as represented on this map is correct and approved by the Company and also that the said portion of the said road has been completed and equipped in all respects as required by law.

E. F. DRAKE, *President.*

Attest:

GEO. A. HAMILTON, *Secretary.*
[SEAL.]

EXHIBIT 12.

EXECUTIVE OFFICE, STATE OF IOWA.

I, Cyrus C. Carpenter, Governor of the State of Iowa do hereby certify that this plat or map of the Sioux City and St. Paul Railroad has been duly filed in my office by the said Sioux City and St. Paul Railroad Company, and shows that portion of the said Railroad commencing at the North line of the State of Iowa and ending at Le Mars, which has been completed and equipped as required by the act of Congress approved May 12th, 1864, and the act of the Legislature of the State, approved — granting lands to the said Railroad Company.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

Done at Des Moines, this fourth day of February A. D. 1873.

C. C. CARPENTER, *Governor.*

Attest:

JOSIAH T. YOUNG,
Secretary of State.

EXHIBIT 13.

STATE OF IOWA, EXECUTIVE DEPARTMENT.

DES MOINES, July 26, 1872.

I, Cyrus C. Carpenter, Governor of the State of Iowa, do hereby certify that two sections of railroad have been constructed from the

south line of the State of Minnesota southerly in the direction of Sioux City, through the counties of Osceola, and O'Brien in the State of Iowa, in accordance with the provisions of an act of Congress, entitled "An Act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," approved May 12, 1864; that each of said sections comprises ten consecutive miles of road, in all twenty miles, on which cars are now running, and that the sections as constructed as aforesaid are completed in a good substantial manner, in all respects suitable for a first-class railroad.

In Testimony Whereof, Witness my hand and the great seal of the State of Iowa, this 26th day of July A. D. 1872.

[SEAL.]

C. C. CARPENTER,

ED. WRIGHT,

Secretary of State.

EXHIBIT 14.

STATE OF IOWA, EXECUTIVE DEPARTMENT,
DES MOINES, August 10, 1872.

To the Secretary of the Interior:

I, Cyrus C. Carpenter, Governor of the State of Iowa, do hereby certify that a section of ten miles of railroad has been constructed in the counties of O'Brien and Sioux in the State of Iowa, in the direction of Sioux City, commencing at the southern end of the section of road, the construction of which was certified by me to the Secretary of the Interior on the 26th day of July ultimo and making in all thirty continuous miles of railroad now constructed from the south line of the State of Minnesota, southerly in the direction of Sioux City, Iowa, in accordance with an act of Congress entitled "An Act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State, approved May 12, 1864.

And I do further certify that said section comprises ten consecutive miles, that cars are now running thereof, and that said section is constructed in a good, substantial manner, and is in all respects suitable for a first-class railroad.

In Testimony Whereof, Witness my hand and the great seal of the State of Iowa, this 10th day of August A. D. 1872.

[L. S.]

C. C. CARPENTER.

By the Governor:

ED. WRIGHT, *Secretary of State.*

EXHIBIT 15.

STATE OF IOWA, EXECUTIVE DEPARTMENT,
DES MOINES, Feb. 4, 1873.

To the Secretary of the Interior:

I, C. C. Carpenter, Governor of the State of Iowa, do hereby certify that of the Railroad from Sioux City in said state, to the south

line of the state of Minnesota," as contemplated in an act of Congress entitled "An Act for a grant of lands to the state of Iowa, in alternate sections, to aid in the construction of a railroad in said state" approved May 12, 1864, there have been constructed, in addition to these three sections of ten miles each heretofore certified by me, two more sections of ten miles each, to-wit, One section of ten miles prior to August 10, 1872, and another section prior to September 10, 1872: that such sections of road are completed in a good, and substantial manner, and in all respects suitable for a first-class railroad, and that cars are now running on said sections of road.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the great seal of the state of Iowa, this 4th day of February 1873.

[L. s.]

By the Governor:

C. C. CARPENTER.

JOSIAH T. YOUNG,
Secretary of State.

EXHIBIT No. 16.

An Act authorizing and directing the Governor to certify to the Sioux City & St. Paul Railroad Company certain lands named therein.

Be It Enacted by the General Assembly of the State of Iowa:

SEC. 1. That the Governor of the State of Iowa be and is hereby authorized and directed to certify to the Sioux City and St. Paul Railroad Company any and all lands which are now held by the state of Iowa in trust for the benefit of said railroad company, in accordance with the provisions of section 2 of chapter 144 of the laws of the eleventh General Assembly.

126 SEC. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 13, 1874.

EXHIBIT 17.

Circuit Court of the United States. Southern District of Iowa, May Term, 1886.

Hon. James M. Love, Presiding.

FRIDAY, May 21, 1886.

No. 1481. Equity.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
vs.

SIoux CITY & ST. PAUL RAILROAD COMPANY, ALEXANDER H. RICE
and Elias F. Drake, trustees. John H. Gear, Governor, and James
K. Powers, Register of the State Land Office of the State of Iowa.

Decree.

This case came on to be further heard on the pleadings and proofs and the mandate and decision of the Supreme Court of the United States; John W. Gray, Esq., appearing as counsel for the complainant, and J. H. Swan, Esq., as counsel for the defendants; and after hearing counsel, and the said pleadings, proofs, mandate and opinion of the Supreme Court having been duly considered, and it appearing to the said court that the said complainant had fully complied with all the conditions of the Act of Congress approved May 12th, 1864, "granting lands to the State of Iowa to aid in the construction of a railroad from the foot of Main Street, South McGregor, in the State of Iowa, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude, until it should intersect the road running from Sioux City to the Minnesota State line, in the County of O'Brien, in said state" and with the act of the Legislature of the State of Iowa, approved February 27th, 1878, conferring said grant upon the complainant, and had fully completed said railroad within the time specified in said act of Congress and said act of the Legislature, and is entitled to receive all the lands contained in said grant not heretofore granted by the State of Iowa.

And it further appearing to said court that the said defendant Sioux City & St. Paul Railroad Company, has fully complied with all the conditions of said Act of Congress, approved May 12th,

1864, "granting certain lands in the State of Iowa to aid in the construction of a railroad from Sioux City in said state, to the south line of the State of Minnesota, at such point as the State of Iowa might select between the Big Sioux and the West Fork of the Des Moines river," and with the act of the Legislature conferring said grant upon the said Sioux City & St. Paul Railroad Company, and has fully completed said railroad within the time specified in the said act of Congress and the said act of the Legislature, from the said state line of the State of Minnesota, in a south-

erly direction to Le Mars in said State of Iowa, a distance of fifty-six and 25-100 miles, and that it is entitled to receive all the lands applicable to said grant, from said state line of the State of Minnesota to said Le Mars to the extent of ten sections per mile of road completed.

And it further appearing to said court that the following described pieces and parcels of land marked "Class No. One (1)" to-wit;

CLASS NO. ONE (1).

Lands within the Joint Ten-Mile Limits of Both Companies.

Description.	Section.	Town.	Range.	Acres.
Pat'd S. $\frac{1}{2}$	9	98	40	320.
" All	29	98	40	640.
" S. W. $\frac{1}{4}$	31	98	40	127.80
" S. W. $\frac{1}{4}$ and S. $\frac{1}{2}$ N. W. $\frac{1}{4}$	33	98	40	240.00
" S. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$	1	98	41	40.
" N. $\frac{1}{2}$ S. W. $\frac{1}{4}$ & N. $\frac{1}{2}$ S. E. $\frac{1}{4}$	27	98	41	560.
" D. $\frac{1}{2}$ S. E. $\frac{1}{4}$	3	98	42	80.
" All	3	98	40	641.98
" All	5	"	"	640.98
" All	7	"	"	601.82
" All	11	"	"	640.
" All	17	"	"	640.
" All	19	"	"	612.80
" All	21	"	"	640.
" All	31	"	"	625.28
" S. E. $\frac{1}{4}$, S. $\frac{1}{2}$ N. E. $\frac{1}{4}$, & S. $\frac{1}{2}$ N. W. $\frac{1}{4}$	31	99	"	308.90
" S. E. $\frac{1}{4}$ & S. $\frac{1}{2}$ N. E. $\frac{1}{4}$	33	"	"	240.
" All	1	98	41	639.
" All	3	"	"	640.84
" All	5	"	"	654.42
" All	7	"	"	612.42
" All	9	"	"	640.00
" All	11	"	"	640.
" All	13	"	"	640.
" All	15	"	"	640.
" All	17	"	"	640.
" All	19	"	"	612.

13,975.12

CLASS NO. ONE (1).

Lands within the Joint Ten-Mile Limits of Both Companies.

128

Description.	Section.	Town.	Range.	Acres.
Brought forward.....	"	"	"	13,975.12
Pat'd All	21	98	41	640.
" All	23	"	"	640.
" All	25	"	"	640.
" S. $\frac{1}{2}$ S. E. $\frac{1}{4}$	27	"	"	80.
" All	29	"	"	640.
" All	31	"	"	625.26
" All	33	"	"	640.
" All	35	"	"	640.
" S. $\frac{1}{2}$, S. $\frac{1}{2}$ N. $\frac{1}{2}$	31	99	"	472.19
" S. $\frac{1}{2}$, S. $\frac{1}{2}$ N. $\frac{1}{2}$	33	"	"	480.
" S. $\frac{1}{4}$, S. $\frac{1}{2}$ N. $\frac{1}{2}$	35	"	"	480.

"	All	1	98	42	662.18
"	All	8	"	"	665.74
"	All	5	"	"	669.72
"	E. $\frac{1}{2}$ E. $\frac{1}{2}$	7	"	"	160.
"	All	9	"	"	640.
Pat'd	All	13	98	42	640.
"	All	17	"	"	640.
"	E. $\frac{1}{2}$ E. $\frac{1}{2}$	19	"	"	160.
"	All	21	"	"	640.
"	All	23	"	"	640.
"	All	25	"	"	640.
"	E. $\frac{1}{2}$	27	"	"	320.
"	N. $\frac{1}{2}$	29	"	"	320.
"	E. $\frac{1}{2}$ E. $\frac{1}{2}$	31	"	"	160.
"	All	33	"	"	640.
"	All	35	"	"	640.

28,200.21

CLASS NO. ONE (1).

Lands within the Joint Ten-Mile Limits of Both Companies.

Description.		Section.	Town.	Range.	Acres.
Brought forward		"	"	"	28,200.21
Pat'd	E. $\frac{1}{2}$ S. E. $\frac{1}{4}$ & S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$	21	99	42	120.
"	S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	33	"	"	480.
"	S. $\frac{1}{2}$ and S. $\frac{1}{2}$ N. $\frac{1}{2}$	35	"	"	480.
"	S. W. $\frac{1}{4}$ N. W. $\frac{1}{5}$	7	97	40	39.50
"	All	5	95	41	638.32
"	N. $\frac{1}{2}$ N. $\frac{1}{2}$	7	"	"	150.52
"	N. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$	3	96	"	39.94
"	N. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$	7	"	"	40.
"	S. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$	15	"	"	40.
"	N. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$	17	"	"	40.
"	N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$	15	97	"	35.48
"	N. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$	11	97	"	40.
"	S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$	13	"	"	40.
"	N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$	17	"	"	40.
"	N. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$	19	"	"	40.71
"	N. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ E. $\frac{1}{2}$ S. W. $\frac{1}{4}$	35	"	"	120.

129

Description.		Section.	Town.	Range.	Acres.
All		1	95	42	642.26
N. $\frac{1}{2}$ S. W. $\frac{1}{4}$ N. $\frac{1}{2}$ S. E. $\frac{1}{4}$		3	"	"	549.60
S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ (Balance) All		5	"	"	620.82
N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$		7	"	"	40.
N. $\frac{1}{2}$ N. $\frac{1}{2}$		9	"	"	160.
N. $\frac{1}{2}$ N. $\frac{1}{2}$		11	"	"	160.
All		1	96	"	641.96
All		3	"	"	646.16
All		5	"	"	654.94
E. $\frac{1}{2}$ E. $\frac{1}{2}$		7	"	"	160.

34,867.42

CLASS No. ONE (1).

Lands within the Joint Ten-Mile Limits of Both Companies.

Description.	Section.	Town.	Range.	Acres.
Brought forward.....				34,867.42
All.....	9	98	42	640.
All.....	11	"	"	640.00
All.....	13	"	"	640.
All.....	15	"	"	640.
All.....	17	"	"	640.
E. $\frac{1}{2}$ E. $\frac{1}{2}$	19	"	"	160.
All.....	21	"	"	640.
All.....	23	"	"	640.
All.....	25	"	"	640.
All.....	27	"	"	640.
All.....	29	"	"	640.
E. $\frac{1}{2}$ E. $\frac{1}{2}$	31	"	"	160.
All.....	33	"	"	640.
All.....	35	"	"	640.
All.....	1	97	"	637.20
All.....	3	"	"	285.00
All.....	5	"	"	260.40
E. $\frac{1}{2}$ E. $\frac{1}{2}$	7	"	"	160.
All.....	9	"	"	640.
All.....	13	"	"	640.
All.....	17	"	"	640.
E. $\frac{1}{2}$ E. $\frac{1}{2}$	19	"	"	160.
All.....	21	"	"	640.
All.....	23	"	"	640.
All.....	27	"	"	640.
S. $\frac{1}{2}$	29	"	"	320.
E. $\frac{1}{2}$ E. $\frac{1}{2}$	31	"	"	160.
All.....	33	"	"	640.
				49,949.62

CLASS No. ONE (1).

Lands within the Joint Ten-Mile Limits of Both Companies.

120.

Description.	Section.	Town.	Range.	Acres.
Brought forward.....				49,949.62
All.....	35	97	42	640.

CLASS ONE (1).

50,589.62

Are a part and portion of the grants so made by said Act of Congress and are within the overlapping limits of said grants and are all situated within the granted limits, that is, within ten miles of the definitely located line of each of said railroads, and that said companies are jointly entitled to said lands, and that patents, therefor, should have been issued by the State of Iowa to the said companies, jointly for all of said lands, but that by mistake all of said lands above marked as "Patented" have been erroneously and wrongfully patented by the State solely to the defendants, Sioux City & St. Paul Railroad Company, and that an undivided one-half interest in the lands so patented should be released by said defendant Sioux City & St. Paul Railroad Company, to said complainant, and that the balance of said lands not patented by the State should be patented to

said complainant and said defendant, Sioux City & St. Paul Railroad Company, jointly.

And it further appearing that the following described lands marked "Class No. Two (2), to-wit:

131

CLASS NO. TWO (2).

Lands within the Ten-Mile Limits of the C. M. & St. P. Ry., but Outside the Ten-Mile Limits of the S. C. & St. P. Ry.

Description.	Section.	Town.	Range.	Acres.
Pat'd All.....	7	98	39	509.32
" All.....	9	"	"	640.
" All.....	13	"	"	640.
" All.....	15	"	"	640.
" All.....	29	"	"	640.
" All.....	25	"	"	640.
" All.....	27	"	"	640.
" All.....	31	"	"	640.
" All.....	33	"	"	640.
" S. W. $\frac{1}{4}$	33	99	"	160.
" All.....	35	98	40	640.
" All.....	27	"	"	640.
" All.....	33	"	"	640.
" All.....	35	"	"	640.
" All.....	3	"	39	642.12
" N. $\frac{1}{2}$ & S. E. $\frac{1}{4}$	6	"	"	432.00
" All.....	11	"	"	640.
" W. $\frac{1}{2}$	19	"	"	280.68
" E. $\frac{1}{2}$	21	"	"	320.
" S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	31	99	"	446.93
" S. E. $\frac{1}{4}$	33	"	"	160.
" All.....	1	98	40	642.20
" E. $\frac{1}{2}$	13	"	"	320.
" S. $\frac{1}{2}$	23	"	"	320.
" S. $\frac{1}{2}$	17	"	38	320.
" All.....	19	"	"	620.68
" S. $\frac{1}{2}$	21	"	"	320.
				13,937.51

CLASS NO. ONE (1).

Lands within the Ten-Mile Limits of the C. M. & St. P. Ry. Co., but Outside the Ten-Mile Limits of the S. C. & St. P. Ry.

Description.	Section.	Town.	Range.	Acres.
Brought forward.....	"	"	"	13,935.31
All.....	29	98	38	640.
All.....	31	"	"	633.78
" W. $\frac{1}{2}$ S. W. $\frac{1}{4}$	7	96	39	62.25
" N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$	7	97	"	40.
All.....	1	95	40	698.23
All.....	3	"	"	675.28
All (N. $\frac{1}{2}$ contracted poor farm....	5	"	"	651.60
" N. $\frac{1}{2}$ N. $\frac{1}{2}$	7	"	"	161.22
" N. $\frac{1}{2}$ and N $\frac{1}{2}$ N. W. $\frac{1}{4}$	9	"	"	400.
All.....	11	"	"	640.00
All.....	13	"	"	640.
" E. $\frac{1}{2}$	15	"	"	320.
" E. $\frac{1}{2}$	23	"	"	320.
All.....	1	96	"	599.88
All.....	3	"	"	612.

All	5	"	"	625.30
All	7	"	"	626.08
All	9	"	"	640.
All	11	"	"	640.
All	13	"	"	640.
All	15	"	"	640.
All	17	"	"	640.
All	19	"	"	625.48
All	21	"	"	640.
All	23	"	"	640.
				27,412.73

Lands within the Ten-Mile Limits of the C. M. & St. P. Ry. Co., but Outside the Ten-Mile Limits of the S. C. & St. P. Ry.

Description.	Section.	Town.	Range.	Acres.
Brought forward.....				27,412.73
All	25	98	40	640.
All	27	"	"	640.
All	29	"	"	640.
All	31	"	"	641.33
All	33	"	"	640.
All	35	"	"	640.
N. $\frac{1}{2}$ N. E. $\frac{1}{4}$	1	97	"	61.44
S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$..	21	"	"	30.
N. E. $\frac{1}{4}$	25	"	"	160.
N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$	35	"	"	40.
All	1	95	41	628.83
All	3	"	"	641.48
N. $\frac{1}{2}$ N. $\frac{1}{2}$	11	"	"	160.
N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$	25	97	"	40.

CLASS No. Two (2).

33,076.28

133

Are a part and portion of said grants so made by said Act of Congress to aid in the construction of a railroad from the foot of Main Street in South McGregor, in the State of Iowa, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude, until it should intersect the road running from Sioux City to the Minnesota State line in the County of O'Brien in said State, and are situated wholly within the granted limits, that is, within ten miles of the definitely located line of said complainant, and not within the granted limits or within ten miles of the located line of the said defendants Sioux City & St. Paul Railroad Company, and that the complainant is entitled thereto and that patents should have been issued therefor to said complainant, but have by mistake all of said lands of said class 2 marked "patented" have been erroneously and wrongfully patented to the defendant Sioux City & St. Paul Railroad Company and that said last named company should release said lands to said complainant, and that all the rest and residue of said lands of said class 2 not marked as patented should be patented to the said complainant by the said State of Iowa.

134 And it further appearing to said Court that the following described lands marked "Class No. Three (3), to-wit:

	Description.	Section.	Town.	Range.	Acres.
Pat'd	E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ & E. $\frac{1}{2}$ N. W. $\frac{1}{4}$	5	99	39	592.28
"	All.....	7	"	"	593.76
"	W. $\frac{1}{2}$	9	"	"	320.
"	All.....	17	"	"	640.
"	All.....	19	"	"	504.
"	s frac $\frac{1}{2}$	9	100	"	214.18
"	All.....	15	"	"	640.
"	E. $\frac{1}{2}$	17	"	"	320.
"	S. W. $\frac{1}{4}$	19	"	"	160.
"	S. W. $\frac{1}{4}$, S. $\frac{1}{2}$ N. E. $\frac{1}{4}$ N. $\frac{1}{2}$ N. W. $\frac{1}{4}$	29	"	"	320.
"	S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ Lots 1 & 2.....	31	"	"	107.60
"	E. $\frac{1}{2}$, S. W. $\frac{1}{4}$, E. $\frac{1}{2}$ N. W. $\frac{1}{4}$	33	"	"	550.65
"	All.....	39	99	40	640.
"	N. $\frac{1}{2}$ N. W. $\frac{1}{4}$	33	"	"	80.
"	All frac.....	7	100	"	387.20
"	All.....	9	"	"	442.16
"	Lots 1, 2, 3, 4, 8 & 9.....	11	"	"	239.72
"	S. E. $\frac{1}{4}$	13	"	"	160.
"	N. W. $\frac{1}{4}$	15	"	"	160.
"	N. $\frac{1}{2}$ & S. E. $\frac{1}{4}$	17	"	"	480.
"	N. $\frac{1}{2}$, S. E. $\frac{1}{4}$, N. $\frac{1}{2}$ N. W. $\frac{1}{4}$	19	"	"	534.38
"	N. W. $\frac{1}{4}$	21	"	"	160.
"	W. $\frac{1}{2}$	27	"	"	320.
"	S. E. $\frac{1}{4}$	29	"	"	160.
"	E. $\frac{1}{2}$ S. W. $\frac{1}{4}$, W. $\frac{1}{2}$ N. W. $\frac{1}{4}$	31	"	"	525.20
"	E. $\frac{1}{2}$	33	"	"	320.

0.674.39

CLASS NO. THREE (3).

Lands within the Ten-Mile Limits of S. C. & St. P. Ry., but Outside the Ten-Mile Limits of the C. M. & St. P. Ry.

	Description.	Section.	Town.	Range.	Acres.
	Brought forward.....				9,674.29
	S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	7	95	41	451.49
	E. $\frac{1}{2}$ S. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$	7	"	42	120.
	S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	9	"	"	480.
	S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	11	"	"	480.
	All.....	15	"	"	640.
	All.....	17	"	"	640.
	E. $\frac{1}{2}$ E. $\frac{1}{2}$	19	"	"	160.
	All.....	21	"	"	640.
Pat'd	W. $\frac{1}{2}$ N. W. $\frac{1}{4}$	5	99	39	89.81
"	E. $\frac{1}{2}$	9	"	"	320.
"	S. $\frac{1}{2}$ frac.....	7	100	"	283.22
135					
Pat'd	W. $\frac{1}{2}$	17	100	39	320.
"	N. $\frac{1}{2}$ & S. W. $\frac{1}{4}$	19	"	"	425.28
"	All.....	21	"	"	640.
"	All.....	27	"	"	640.
"	N. $\frac{1}{2}$ N. E. $\frac{1}{4}$ S. $\frac{1}{2}$ N. W. $\frac{1}{4}$ & S. W. $\frac{1}{4}$	29	"	"	320.
"	S. $\frac{1}{2}$ frac E. $\frac{1}{2}$ N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$	31	"	"	397.77
"	W. $\frac{1}{2}$ N. W. $\frac{1}{4}$ and R-way.....	33	"	"	89.25
"	All.....	1	99	40	675.96
"	All.....	3	"	"	667.14
"	All.....	5	"	"	656.24
"	All.....	7	99	40	608.20
"	All.....	11	"	"	640.
"	All.....	13	"	"	640.
"	All.....	17	"	"	640.
"	All.....	19	"	"	601.86

21,940.21

CLASS No. THREE (3).

Lands within the Ten-Mile Limits of the S. C. & St. P. Ry., but Outside the Ten-Mile Limits of the C. M. & St. P. Ry.

	Description.	Section.	Town.	Range.	Acres.
	Brought forward.....	..	..	..	21,940.21
Pat'd	All.....	21	99	40	640.
"	All.....	27	"	"	640.
"	N. $\frac{1}{2}$ N. $\frac{1}{2}$	31	"	"	140.74
"	N. $\frac{1}{2}$ N. E. $\frac{1}{4}$	33	"	"	80.
"	Lots 5, 6, 7, 10, 11, & 12.....	11	100	"	240.
"	N. $\frac{1}{2}$ & S. W. $\frac{1}{4}$	13	"	"	480.
"	E. $\frac{1}{2}$ & S. W. $\frac{1}{4}$	15	"	"	480.
"	S. W. $\frac{1}{4}$	17	"	"	160.
"	S. $\frac{1}{2}$ S. W. $\frac{1}{4}$	19	"	"	72.14
"	E. $\frac{1}{2}$ & S. W. $\frac{1}{4}$	21	"	"	480.
"	All.....	23	"	"	640.
"	All.....	25	"	"	640.
"	E. $\frac{1}{2}$	27	"	"	320.
"	N. $\frac{1}{2}$ & S. W. $\frac{1}{4}$	29	"	"	480.
"	E. $\frac{1}{2}$ N. W. $\frac{1}{4}$	31	"	"	80.
"	W. $\frac{1}{2}$	33	"	"	320.
"	All.....	35	"	"	640.
"	All.....	1	99	41	641.60
"	All.....	3	"	"	233.28
"	All.....	5	"	"	621.26
"	All.....	7	"	"	611.76
"	All.....	9	"	"	640.
"	All.....	11	"	"	640.
"	All.....	13	"	"	640.
"	All.....	15	"	"	640.
"	All.....	17	"	"	640.

34,189.19

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CLASS No. THREE (3).

Lands within the Ten-Mile Limits of the S. C. & St. P. Ry., but Outside the Ten-Mile Limits of the C. M. & St. P. Ry.

	Description.	Section.	Town.	Range.	Acres.
	Brought forward.....	..	..	..	34,189.19
Pat'd	All.....	19	99	41	619.20
"	All.....	21	"	"	640.
"	All.....	23	"	"	640.
"	All.....	25	"	"	640.
"	All.....	27	"	"	640.
"	All.....	29	"	"	640.
"	N. $\frac{1}{2}$ N. $\frac{1}{2}$	31	"	"	156.40
"	N. $\frac{1}{2}$ N. $\frac{1}{2}$	33	"	"	160.
"	N. $\frac{1}{2}$ N. $\frac{1}{2}$	35	"	"	160.
"	All fr.....	7	100	"	384.14
"	All fr.....	9	100	"	407.60
"	All fr.....	11	"	"	406.72
"	All.....	13	"	"	640.
"	All.....	15	"	"	640.
"	All.....	17	"	"	640.
"	All.....	19	"	"	598.60
"	All.....	21	"	"	640.
"	All.....	23	"	"	640.
"	All.....	25	"	"	640.
"	All.....	27	"	"	640.
"	All.....	29	"	"	640.
"	All.....	31	"	"	607.16
"	All.....	33	"	"	640.
"	All.....	35	"	"	640.
"	All.....	1	99	42	615.72
"	All.....	3	"	"	628.48

48,537.20

CLASS NO. THREE (3).

Lands within the Ten-Mile Limits of the S. C. & St. P. Ry. Co. and Outside the Ten-Mile Limits of the C. M. & St. P. Ry. Co.

	Description.	Section.	Town.	Range.	Acres.
	Brought forward.....	..	..	..	48,537.30
Pat'd	All.....	5	99	42	628.42
"	E. ½ E. ½.....	7	"	"	160.
"	All.....	9	"	"	640.
"	All.....	11	"	"	640.
137					
"	All.....	13	"	"	640.
"	All.....	15	"	"	640.
"	All.....	17	"	"	640.
"	E. ½ E. ½.....	19	"	"	160.
"	All.....	21	"	"	640.
"	All.....	23	"	"	640.
"	All.....	25	"	"	640.
"	All.....	27	"	"	640.
"	All.....	29	"	"	640.
"	N. E. ¼ N. E. ¼.....	31	"	"	40.
"	N. ½ N. ½.....	33	"	"	160.
"	N. ½ N. ½.....	35	"	"	160.
"	All fr.....	9	100	"	410.66
"	All fr.....	11	"	"	409.78
"	All.....	13	"	"	640.
"	All.....	15	"	"	640.
"	All.....	17	"	"	640.
"	E. ½ E. ½.....	19	"	"	160.
"	All.....	21	"	"	640.
"	All.....	23	"	"	640.
"	All.....	25	"	"	640.
"	All.....	27	"	"	640.
					61,716.16

CLASS NO. THREE (3).

Lands within the Ten-Mile Limits of the S. C. & St. P. Ry. and Outside the Ten-Mile Limits of the C. M. & St. P. Ry. Co.

	Description.	Section.	Town.	Range.	Acres.
	Brought forward.....	..	..	..	61,716.16
Pat'd	All.....	29	100	42	640.
"	E. ½ E. ½.....	31	"	"	160.00
"	All.....	33	"	"	640.
"	All.....	35	"	"	640.

CLASS NO. THREE (3).

63,796.16

Are a part and portion of the grant made by the Act of Congress to aid in the construction of a railroad from Sioux City to the State line, and are situated wholly within the granted limits, that is, within ten miles of the definitely located line of said defendant Sioux City & St. Paul Railroad Company, and not within the granted limits or within ten miles of the located line of said complainant, and that said Sioux City & St. Paul Railroad Company is entitled thereto; and that all of said lands in said Class 3 marked "patented" have

been patented by the State of Iowa to said defendant company, and that said defendant company is entitled to a patent for all the residue of said lands contained in said Class 3.

138 And it further appearing to said court, that the following described lands marked "Class No. Four (4)" to-wit:

JOINT INDEMNITY LANDS.

Description.	Section.	Town.	Range.	Acres.
S. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$, N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$ S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, N. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ S. $\frac{1}{2}$ S. E. $\frac{1}{4}$	7	98	38	427.42
All.....	15	"	"	640.
N. $\frac{1}{2}$	17	"	"	320.
S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ & N. W. $\frac{1}{4}$	21	"	"	200.
S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ & N. W. $\frac{1}{4}$	"	"	"	"
South				
S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	7	98	40	483.06
S. $\frac{1}{2}$ N. W. $\frac{1}{4}$ & S. W. $\frac{1}{4}$	9	"	"	240.
W. $\frac{1}{2}$	15	"	"	320.
All.....	17	"	"	640.
All.....	19	"	"	671.52
All.....	21	"	"	640.
W. $\frac{1}{2}$	23	"	"	320.
All.....	27	"	"	640.
All.....	29	"	"	640.
S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	11	98	41	480.
All.....	13	"	"	640.
All.....	15	"	"	640.
W. $\frac{1}{2}$	19	"	"	288.72
All.....	23	"	"	640.
All.....	25	"	"	640.
All.....	27	"	"	640.
All.....	13	"	42	640.
All.....	33	"	"	640.
All.....	35	"	"	640.
All.....	37	"	"	640.
All.....	39	"	"	640.

CLASS NO. FOUR (4).

13,231.06

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JOINT INDEMNITY LANDS.

Description.	Section.	Town.	Range.	Acres.
Brought forward.....	"	"	"	12,231.06
E. $\frac{1}{2}$ N. E. $\frac{1}{4}$	21	98	42	80.
Pat'd All.....	3	92	38	640.50
" All.....	5	"	"	641.50
" N. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$	7	"	"	40.
" All.....	9	"	"	640.
" All.....	11	"	"	640.
" S. $\frac{1}{2}$ N. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$ S. $\frac{1}{2}$ N. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$	7	99	37	477.04
" N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$, S. $\frac{1}{2}$ N. $\frac{1}{2}$ & S. $\frac{1}{2}$	19	"	"	532.22
" S. $\frac{1}{2}$	21	100	"	217.17
" All.....	1	99	36	685.78
" N. $\frac{1}{4}$, W. $\frac{1}{2}$ N. W. $\frac{1}{4}$, N. $\frac{1}{4}$ S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ & S. E. $\frac{1}{4}$	3	"	"	512.78
" S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ & S. E. $\frac{1}{4}$	5	"	"	208.21
" All.....	9	"	"	640.

N. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$, N. $\frac{1}{2}$ N. W. $\frac{1}{4}$, N. $\frac{1}{2}$ S. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$..	11	"	"	320.
N. E. $\frac{1}{2}$ S. $\frac{1}{4}$ E. $\frac{1}{4}$ N. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$	13	90	30	600.
All	15	"	"	640.
S. $\frac{1}{4}$	19	"	"	211.25
N. $\frac{1}{4}$ N. $\frac{1}{2}$ S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$, N. $\frac{1}{4}$ S. W. $\frac{1}{4}$ N. $\frac{1}{2}$ S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$	21	"	"	440.
All	23	"	"	600.
All	27	"	"	640.
N. $\frac{1}{2}$	27	"	"	320.
N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ W. $\frac{1}{4}$ W. $\frac{1}{2}$	29	"	"	200.
N. $\frac{1}{2}$ S. E. $\frac{1}{4}$ N. $\frac{1}{2}$ S. W. $\frac{1}{4}$	31	"	"	548.21
E. $\frac{1}{2}$ & S. W. $\frac{1}{4}$	33	"	"	480.
N. $\frac{1}{4}$ S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ less one acre.....	35	"	"	510.
N. E. $\frac{1}{4}$ W. $\frac{1}{4}$ N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$	19	100	"	261.38
All	1	98	30	642.16
W. $\frac{1}{2}$ & S. E. $\frac{1}{4}$	1	90	"	500.25
S. E. $\frac{1}{4}$	11	"	"	160.
N. W. $\frac{1}{4}$	21	"	"	160.
All	23	"	"	640.
All	29	"	"	640.
N. $\frac{1}{2}$ N. $\frac{1}{2}$	31	"	"	148.79
All	35	"	"	640.
All	23	100	"	640.
N. W. $\frac{1}{4}$ & S. W. $\frac{1}{4}$ less R-way....	25	"	"	313.75
W. $\frac{1}{2}$	5	90	38	246.36
All	7	"	"	612.72
All	17	"	"	640.
N. $\frac{1}{2}$	19	"	"	310.91
S. E. $\frac{1}{4}$	21	"	"	160.
S. $\frac{1}{2}$	27	"	"	320.
S. E. $\frac{1}{4}$ & S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$	29	"	"	200.
N. W. $\frac{1}{4}$	33	"	"	160.
School Lot in.....	35	"	"	1.
S. W. $\frac{1}{4}$	17	100	"	160.
S. $\frac{1}{2}$	19	100	38	304.74
S. $\frac{1}{2}$	21	"	"	320.
E. $\frac{1}{2}$ E. $\frac{1}{2}$ W. $\frac{1}{2}$ S. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$, All	27	"	"	520.
All	29	"	"	578.75
All	31	"	"	609.32
All	33	"	"	236.80
N. $\frac{1}{2}$ S. E. $\frac{1}{4}$ N. $\frac{1}{2}$ S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$	35	"	"	600.
N. E. $\frac{1}{4}$	1	90	30	186.39
All	3	"	"	680.72
W. $\frac{1}{2}$ N. E. $\frac{1}{4}$	11	"	"	480.
All	13	"	"	640.00
All	15	"	"	640.
W. $\frac{1}{2}$ S. W. $\frac{1}{4}$	21	"	"	480.
All	25	"	"	640.
All	27	"	"	640.
N. $\frac{1}{2}$	33	"	"	320.
S. $\frac{1}{2}$	13	100	"	320.
N. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$ R-way in S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$	25	"	"	326.25
All	35	"	"	640.
E. $\frac{1}{2}$ E. $\frac{1}{2}$	7	"	42	102.26

Are a part and portion of said grants so made by said Act of Congress and are within the overlapping limits of said grants and are situated wholly within the indemnity limits of both of said railroads, and not within the granted or ten mile limits of either, and that said lands belong to said companies jointly and should have been so patented to them, but that by mistake all of said lands above marked "patented" have been erroneously and wrongfully patented solely to the defendant Sioux City & St. Paul Railroad Company, and that an undivided one-half interest in the lands of Class No. 4, so patented should be released by the said Sioux City & St. Paul Railroad Company to said complainant, and that the balance of said lands in said Class No. 4, should be patented by the State of Iowa to said companies jointly.

And it further appearing to said Court that a portion of the lands of classes numbered 1, 2 and 4, so as aforesaid patented to the Sioux City & St. Paul Railroad Company, have been sold and disposed of to bona fide purchasers by the said defendant Sioux City & St. Paul Railroad Company, and the purchaser money therefor received, by said Company, and that said defendant Sioux City & St. Paul Railroad Company should account for the whole of the proceeds of Class No. 2 and an undivided one-half of the proceeds of classes No. 1 and 4 to the said complainant.

Now, Therefore, On Motion of John W. Cary, of counsel for complainant, it is ordered, adjudged and decreed, that all of said lands hereinbefore mentioned and described were by said Act of Congress approved May 12, 1864, granted to the state of Iowa in trust, to aid in the building of said railroad, and belong to said grants; that said complaint, Chicago, Milwaukee & St. Paul Railroad Company, has fully complied with all the terms and conditions of said Act of Congress granting said lands, so far as said lands were given to aid in the construction of a railroad from the foot of Main Street South McGregor, in the State of Iowa, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude, until it should intersect the road running from Sioux City to the Minnesota state line in the county of O'Brien in said state, and with the act of the legislature of the State of Iowa, approved February 27, 1878, conferring said grant upon the complainant, and has fully completed said railroad within the time specified in said Act of Congress and said act of the legislature and thereby has become entitled to receive all lands contained in said grant not heretofore granted by the State of Iowa to other parties, and is not entitled to all said lands above described as pertaining to said grant. And it is further ordered, adjudged and decreed that the said defendant, Sioux City & St. Paul Railroad Company, has fully complied with all the conditions of said Act of Congress approved May 12, 1864, granting said lands in the State of Iowa to aid in the construction of a railroad from Sioux City in said State, to the south line of the State of Minnesota, at such point as the said State of Iowa might select between the Big Sioux and the west fork of the Des Moines River, and with the act of the legislature conferring said grant upon the said defendant Sioux City & Des Moines Railroad Company, so far as relates to the lands in question, and fully completed

the railroad within the time specified in the said Act of Congress and said act of the legislature, from the State line of the said State of Minnesota, in a southerly direction to LeMars in the State of Iowa, distance of fifty-six and 25-100 miles, and is entitled to receive all the lands applicable to said grant from said State line of the State of Minnesota to the extent of ten sections per mile for each and every mile of road constructed, including all the lands hereinabove described as belonging to that grant.

It is further ordered, adjudged and decreed that the several pieces and parcels of land first above mentioned in Class No. 1, are a part and portion of said grant so made by said act of Congress and are within the overlapping limits of said grant, that is, within ten miles of the definitely located line of each of said railroads, and that said companies are jointly entitled to said lands, and that said State of Iowa, or the proper officers thereof, should of right, make, execute and deliver to the said complainant, and the said defendant Sioux City & St. Paul Railroad Company jointly, patents for all of said lands in Class No. 1 not heretofore patented.

It is ordered adjudged and decreed and this Court by virtue of the power therein vested doth order, adjudge and decree that the complainant Chicago Milwaukee & St. Paul Railway Company and the defendants the Sioux City & St. Paul Railroad Company, are each of them the owner of and entitled to and are each hereby invested with the title in fee to an equal undivided one-half of all the lands described above in Class 1, save and except the Right of Way as excepted in said Act of the General Assembly of the State of Iowa. Approved February 27th, 1878.

It is further ordered, adjudged and decreed that the said defendants, Sioux City & St. Paul Railroad Company do release and convey to said complainant one equal undivided half of all of said lands mentioned in Class No. 1 which have heretofore been patented to said defendant company by the State of Iowa, and the title to which is now held by said defendant company, with covenants against their own acts, and free, released and discharged from the lien of the mortgage deed of trust executed by said Sioux City & St. Paul Railroad Company to Elias F. Drake and Alexander H. Rice, as trustees. And it is further ordered, adjudged and decreed that the lien of said mortgage be, and the same is hereby vacated, released and set
143 aside as to the said one equal undivided half of said lands mentioned and described in said Class No. 1.

It is further ordered, adjudged and decreed that all the lands mentioned and described in Class No. 2 above mentioned, are a part and portion of said grants so made by said Act of Congress and are situated wholly within the granted limits that is, within ten miles of the definitely located line of said complainant, and not within the granted limits or within ten miles of the located line of the said defendant Sioux City & St. Paul Railroad Company, and that the complainant is entitled thereto, and that the state of Iowa, or the proper officers of said State, should of right, execute and deliver to the said complainant patents for all of said lands mentioned and described in said Class No. 2 not heretofore patented; And it is fur-

ther ordered, adjudged and decreed, and this Court by virtue of the power herein vested doth order, adjudge and decree that the complainant herein the Chicago Milwaukee & St. Paul-Railway Company is the owner of and entitled to and is hereby invested with the title in fee to the whole of the lands above mentioned and described as Class No. 2 free and clear of all encumbrances made or placed thereon by the defendants or any or either of them.

It is further ordered, adjudged and decreed that the said defendant the Sioux City & St. Paul Railroad Company release and convey to said plaintiff all said lands mentioned in Class No. 2 which have heretofore been patented to said defendant by the State of Iowa, the title to which is now held by said defendant company, with covenants against their own acts, and free released and discharged from the lien of the mortgage deed of trust executed by said Sioux City & St. Paul Railroad Company, to Elias F. Drake and Alexander H. Rice as trustees; And it is further ordered, adjudged and decreed that the lien of said mortgage be, and the same hereby is, vacated, released and set aside to all of said lands mentioned and described in said Class No. 2.

It is further ordered, adjudged and decreed that the several pieces and parcels of land mentioned and described in Class No. 2 above mentioned, are a part and portion of said grant made by said Act of Congress and are situated wholly within the granted limits that is, within ten miles of the definitely located line of said defendant Sioux City & St. Paul Railroad Company, and not within the granted limits or within ten miles of the located line of said complainant, and that the defendant Sioux City & St. Paul Railroad Company

is entitled thereto, and that the State of Iowa, or the proper
144 officers of said State should of right, make, execute and deliver patents therefor to the said defendant Sioux City & St. Paul Railroad Company. And it is further ordered, adjudged and decreed and this Court by virtue of the power herein vested, doth order, adjudge and decree that the Defendant Sioux City & St. Paul Railroad Company is the owner of and entitled to and is hereby invested with the title in fee to all of the lands above mentioned and described as Class No. 3.

It is further ordered, adjudged and decreed that the several pieces and parcels of land mentioned and described in Class No. 4, above mentioned, are a part and portion of said grant made by said act of Congress and are within the overlapping limits of said grant and are all situated within the indemnity limits, that is, within twenty miles of the definitely located line of each of said railroads and not within the ten mile limits of either, and that companies are jointly entitled to said lands, and that said State of Iowa, or the proper officers thereof, should of right, make, execute and deliver to the said complainant and the said defendant Sioux City & St. Paul Railroad Company, jointly, patents for all of said lands in Class No. 4 not heretofore patented. And it is further ordered, adjudged and decreed and this Court by virtue of the power therein vested doth order, adjudge and decree that the complainant herein, the Chicago Milwaukee & St. Paul Railroad Company, and the defendants, the

Sioux City & St. Paul Railroad Company, are jointly the owners of and entitled to and are each hereby invested with the title in fee to all of the lands above described as Class No. 4.

And it is further ordered, adjudged and decreed that the said defendant Sioux City & St. Paul Railroad Company do release and convey to said complainant one equal undivided half of all of said lands mentioned in Class No. 4 which have heretofore been patented to said defendant Sioux City & St. Paul Railroad Company, by the State of Iowa the title to which is now held by said defendant Company, with covenants against their own acts, and free, released and discharged from the line of the mortgage deed of trust executed by said defendant Sioux City & St. Paul Railroad Company to Elias F. Drake and Alexander H. Rice, as trustees. And it is further ordered, adjudged and decreed that the lien of said mortgage be, and the same hereby is, vacated, released and set aside as to the said one equal undivided half of said lands mentioned and described in said Class No. 4.

It is further ordered, adjudged and decreed that the said defendant Sioux City & St. Paul Railroad Company do account with the
145 said complainant as to all the lands mentioned and described in Classes No. 1 and 2 and 4 heretofore patented to said Company by the State of Iowa, the title to which is not now in said defendant Sioux City & St. Paul Railroad Company, for the proceeds of said lands: and on such accounting being perfected, that the said defendant Sioux City & St. Paul Railroad Company pay to the complainant the whole amount of the proceeds of said lands in Class No. 2, and one-half of the proceeds of all of said lands in Classes No. 1 and 4.

And it appearing to the court that W. C. Hillis, commissioner heretofore appointed to make partition of said lands, is absent from the state and may continue so to an indefinite period of time, it is hereby ordered that P. T. Lomax be substituted in his stead; and it is further ordered, adjudged and decreed that it be referred to P. T. Lomax, John A. Elliott, and Ed. R. Mason, as commissioners to state said account and make report of their doings to this court; and it is further ordered, adjudged and decreed that they also make partition of all of said lands jointly held by said companies. The opinion of a majority of said commissioners to prevail on all disputed matters properly arising before them.

(Signed)

JAMES M. LOVE, *Judge.*

Filed May 21, 1886. E. R. Mason, Clerk.

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

I, E. R. Mason, clerk of said court for said district, do hereby certify that the foregoing transcript contains a full, true and complete copy of the decree filed May 21st, 1886, in a certain case in said court wherein the Chicago Milwaukee & St. Paul Railway Company is complainant and the Sioux City & St. Paul Railroad Company

et al. are defendants, as full, true and complete as the original of the same now remains on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at my office in Des Moines, in said district, this 3rd day of March A. D. 1896.

[SEAL.]

E. R. MASON,
Clerk United States Circuit Court,
Southern District of Iowa.

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EXHIBIT 18.

Commissioners' Report and Order of Court Confirming Same.

United States Circuit Court, Southern District of Iowa, Central Division, October Term, 1886.

No. 1481. Eq.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
SIOUX CITY & ST. PAUL RAILROAD COMPANY.

THURSDAY, October 28, 1886.

This cause came on this day for hearing, the complainant appeared by George E. Clark, and defendant appearing by J. H. Swan and consenting thereto, it is now ordered that the report of commissioners of partition, made under and in pursuance of the decree entered in this cause at the May term 1886, be and the same is hereby in all respects ratified, approved and confirmed.

Circuit Court of the United States, District of Iowa.

In Equity.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, and Others.

To the Judges of said Court:

In pursuance of and in obedience to a decretal order in the above entitled cause dated on the 19th day of May 1882 as modified by a subsequent decretal order made on the 21st day of May 1886 by which the undersigned P. T. Lomax, John A. Elliott and Edward R. Mason were appointed commissioners, among other things, to make partition between the said complainant, Chicago Milwaukee & St. Paul Railway Company and the Sioux City & St. Paul Railroad Company of all the lands mentioned and described in said last named decretal order as class No. 1 and as Class No. 4 awarding to each of said companies an equal half thereof, we, the said commissioners, do hereby respectfully report and return.

That having been first duly sworn and having severally taken the oath hereto annexed, and having been attended by counsel of the respective parties, John W. Cary, Esq., appearing for the complainant and J. H. Swan, Esq., appearing for the defendant, the Sioux City & St. Paul Railroad Company we have carefully considered the matters referred to us in said commission and have satisfied ourselves of the condition and situation thereof.

147 1st. We find and report that all the following pieces and parcels of land of said classes 1 and 4 of said decree, herein particularly described in schedule A had, prior to the making of said decree on the 21st day of May 1886 been sold and disposed of by the defendant, the Sioux City & St. Paul Railroad Company, and conveyances thereof made to actual purchasers, and that the complainant Chicago Milwaukee & St. Paul Railroad Company has assented thereto and had executed a conveyance ratifying and confirming said sales and for that reason no partition of said lands in schedule A has been made, to-wit:—

LIST OF LANDS IN CLASS NO. ONE (1), SCHEDULE "A."

Description.	Section.	Town.	Range.	Acres.
Pat'd All.....	3	98	40	641.98
" All.....	5	"	"	640.98
" All.....	7	"	"	601.82
" All.....	11	"	"	640.
" All.....	17	"	"	640.
" All.....	19	"	"	613.80
" All.....	21	"	"	640.
" All.....	31	"	"	625.28
" S. E. $\frac{1}{4}$, S. $\frac{1}{2}$, N. E. $\frac{1}{4}$, S. $\frac{1}{2}$ N. W..	31	99	"	308.90
" S. E. $\frac{1}{4}$ & S. $\frac{1}{2}$ N. E. $\frac{1}{4}$	33	"	"	240.
" All.....	1	98	41	639.
" All.....	3	"	"	648.84
" All.....	5	"	"	654.42
" All.....	7	"	"	612.42
" All.....	9	"	"	640.
" All.....	11	"	"	640.
" All.....	13	"	"	640.
" All.....	15	"	"	640.
" All.....	17	"	"	640.
" All.....	19	"	"	612.
" All.....	21	98	41	640.
" All.....	23	"	"	640.
" All.....	25	"	"	640.
" S. $\frac{1}{2}$ S. E. $\frac{1}{4}$	27	"	"	80.
" All.....	29	"	"	640.
				14,597.24

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LIST OF LANDS IN CLASS NO. ONE (1), SCHEDULE "A."

Description.	Section.	Town.	Range.	Acres.
Brought forward.....	..	..	..	14,597.24
Pat'd All.....	31	98	41	635.26
" All.....	33	"	"	640.
" All.....	35	"	"	640.
" S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	31	99	"	472.19
" S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	33	"	"	480.
" S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	35	"	"	480.

" All	1	98	42	662.18
" All	3	"	"	665.74
" All	5	"	"	669.72
" E. $\frac{1}{2}$ N. $\frac{1}{2}$	7	"	"	160.
" All	9	"	"	640.
" All	13	"	Q	640.
" All	17	"	"	640.
" E. $\frac{1}{2}$ E. $\frac{1}{2}$	19	"	"	160.
" All	21	"	"	640.
" All	23	"	"	640.
" All	25	"	"	640.
" E. $\frac{1}{2}$	27	"	"	320.
" N. $\frac{1}{2}$	29	"	"	320.
" E. $\frac{1}{2}$ E. $\frac{1}{2}$	31	"	"	160.
" All	33	"	"	640.
" All	35	"	"	640.
" E. $\frac{1}{2}$ S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$	31	99	"	120.
" S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	33	"	"	480.
" S. $\frac{1}{2}$ & S. $\frac{1}{2}$ N. $\frac{1}{2}$	35	"	"	480.
" N. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ E. $\frac{1}{2}$ S. W. $\frac{1}{4}$	35	97	41	120.
" S. $\frac{1}{2}$	29	"	42	320.

CLASS ONE (1), SCHEDULE "A."

27,702.33

LIST OF LANDS IN CLASS NO. FOUR (4), SCHEDULE "A."

Description.	Section.	Town.	Range.	Acres.
Pat'd West $\frac{1}{2}$	5	99	38	346.26
" All	7	"	"	612.72
" All	17	"	"	640.
" N. $\frac{1}{2}$	19	"	"	310.91
" S. E. $\frac{1}{4}$	21	"	"	160.
" S. $\frac{1}{2}$	27	"	"	320.
" S. E. $\frac{1}{4}$ & S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$	29	"	"	200.
" N. W. $\frac{1}{4}$	33	"	"	160.
" School Lot in	35	"	"	1.
" S. W. $\frac{1}{4}$	17	100	"	160.
" S. $\frac{1}{2}$	19	"	"	204.74
" S. $\frac{1}{2}$	21	"	"	320.
" E. $\frac{1}{2}$ E. $\frac{1}{2}$ W. $\frac{1}{2}$ S. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$	27	"	"	520.
" All	29	"	"	578.75
" All	31	"	"	609.32
" All	33	"	"	236.80
" N. $\frac{1}{2}$ S. E. $\frac{1}{4}$ N. $\frac{1}{2}$ S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ S. W.	35	"	"	600.
" N. E. $\frac{1}{4}$	1	99	39	186.39
" All	3	"	"	689.52
" W. $\frac{1}{2}$ N. E. $\frac{1}{4}$	11	"	"	480.
" All	13	"	"	640.
" All	15	"	"	640.
" E. $\frac{1}{2}$ & S. W. $\frac{1}{4}$	21	"	"	480.
" All	25	"	"	640.
" All	27	"	"	640.
" N. $\frac{1}{2}$	33	"	"	320.
" S. $\frac{1}{2}$	13	100	"	320.
" N. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$ R-way in S. E. S. E.	25	"	"	326.25
" All	35	"	"	640.
" E. $\frac{1}{2}$ E. $\frac{1}{2}$	7	"	42	102.26

CLASS NO. FOUR (4), SCHEDULE "A."

12,185.02

2nd. We further report that we have made partition of all the rest and residue of said lands described in classes No. 1 and No. 4 of said decree, between said parties according to their respective rights and interests therein, as the same have been ascertained, declared and determined by the said Court, as we were by the said decretal order commanded, we divided the whole of said last named premises into two lots, each of which allotments is in our opinion of equal value, and submitted said allotments to the respective counsel who stated that they did not care to be further heard thereon, and that we have set off in severalty to the said complainants, Chicago Milwaukee & St. Paul Railroad Company all these certain pieces and parcels of said premises designated and described as Schedule B as follows, to-wit:

150

LIST OF LANDS IN CLASS NO. ONE (1), SCHEDULE B.

	Description.	Section.	Town.	Range.	Acres.
Pat'd	S. $\frac{1}{2}$	9	98	40	320.
"	S. $\frac{1}{2}$ N. W. $\frac{1}{4}$	3	90	40	80.
"	S. W. $\frac{1}{4}$	31	"	"	127.88
"	S. W. $\frac{1}{4}$	33	"	"	160.
"	N. E. $\frac{1}{4}$ N. $\frac{1}{2}$ S. E. $\frac{1}{4}$	27	98	41	240.
"	S. $\frac{1}{2}$ S. E. $\frac{1}{4}$	3	95	42	80.
	E. $\frac{1}{2}$	5	95	41	219.68
	N. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$	7	96	"	40.
	N. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$	17	"	"	40.
	N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$	5	97	"	35.48
	N. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$	11	"	"	40.
	N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$	17	"	"	40.
	N. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$	19	"	"	40.71
	N. $\frac{1}{2}$ S. W. $\frac{1}{4}$, N. $\frac{1}{2}$ S. E. $\frac{1}{4}$	3	95	43	549.60
	N. $\frac{1}{2}$ N. $\frac{1}{2}$	11	"	"	160.
All	.....	1	96	"	641.96
N. $\frac{1}{2}$	.....	5	"	"	334.94
E. $\frac{1}{2}$ N. E. $\frac{1}{4}$	.....	7	"	"	80.
All	.....	9	96	42	640.
All	.....	13	"	"	640.
E. $\frac{1}{2}$	.....	17	"	"	320.
E. $\frac{1}{2}$ E. $\frac{1}{2}$	.....	19	"	"	160.
All	.....	21	"	"	640.
All	.....	25	"	"	640.
All	.....	27	"	"	640.
E. $\frac{1}{2}$ N. E. $\frac{1}{4}$	.....	31	"	"	80.
All	.....	35	"	"	640.
All	.....	1	97	"	607.20
All	.....	5	"	"	590.40
E. $\frac{1}{2}$ E. $\frac{1}{2}$	.....	7	"	"	160.
All	.....	13	"	"	640.
All	.....	23	"	"	640.
All	.....	27	"	"	640.
N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$	.....	31	"	"	80.
N. $\frac{1}{2}$	.....	33	"	"	320.

11,417.85

LIST OF LANDS IN CLASS NO. FOUR (4), SCHEDULE "B."

Description.	Section.	Town.	Range.	Acres.
Pat'd S. $\frac{1}{2}$ S. W. N. E., S. $\frac{1}{2}$ N. W. & N. E. N. W.....	7	90	37	477.64
" N. W. N. E., S. $\frac{1}{2}$ N. E. N. W. N. W. & S. N. W.....	19	"	"	226.79
" S. $\frac{1}{2}$	19	"	"	306.73
" All.....	3	95	38	640.50
" All.....	9	"	"	640.
" All.....	1	96	"	682.78
" N. W. N. E.....	5	"	"	52.21
" N. E., N. $\frac{1}{2}$ N. W., S. W., W. $\frac{1}{2}$ S. E., N. E. S. E.....	11	"	"	520.
" S. $\frac{1}{2}$ N. E. S. $\frac{1}{2}$ N. W., N. E. N. W.	13	"	"	600.
" S. $\frac{1}{2}$	19	"	"	311.35

151

Pat'd N. $\frac{1}{2}$, N. $\frac{1}{2}$ S. W., S. E. S. W.....	21	90	38	440.
" All.....	25	"	"	640.
" N. W. N. E.....	29	"	"	40.
" S. E., N. $\frac{1}{2}$, N. $\frac{1}{2}$ S. W.....	31	"	"	548.21
" N. E., E. $\frac{1}{2}$ S. W.....	33	"	"	240.
" E. $\frac{1}{2}$	1	98	39	221.47
" N. W. $\frac{1}{4}$	21	99	"	160.
" N. $\frac{1}{2}$	23	"	"	320.
" N. $\frac{1}{2}$	29	"	"	320.
" All.....	35	"	"	640.
" N. W. $\frac{1}{4}$	25	100	"	160.

CLASS NO. FOUR (4), SCHEDULE "B."

8,288.68

LIST OF LANDS IN CLASS NO. FOUR (4), SCHEDULE "E."

Description.	Section.	Town.	Range.	Acres.
S. W., N. W. N. W., S. $\frac{1}{2}$ N. W., S. E. N. E., N. W. S. E., & S. $\frac{1}{2}$ S. E.	7	98	38	427.42
N. E. $\frac{1}{4}$	17	"	"	160.
N. W. & S. W. N. E.....	21	"	"	200.
S. $\frac{1}{2}$ N. $\frac{1}{2}$ & S. $\frac{1}{2}$	7	95	40	483.96
W. $\frac{1}{2}$	15	"	"	320.
All.....	17	"	"	640.
All.....	19	"	"	651.52
All.....	21	"	"	640.
W. $\frac{1}{2}$	23	"	"	320.
All.....	27	"	"	640.
All.....	29	"	"	640.
All.....	13	"	43	640.
All.....	25	"	"	640.
N. $\frac{1}{2}$	29	"	"	320.

Brought	6,722.90
				8,288.68

Total	15,011.58
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And we have also set off in severalty to the said Sioux City & St. Paul Railroad Company all those certain pieces and parcels of said premises designated and described as Schedule C. as follows, to-wit;

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LIST OF LANDS IN CLASS NO. ONE (1), SCHEDULE "C."

Description.	Section.	Town.	Range.	Acres.
S. W. N. W.....	7	97	40	38.50
W. ½.....	5	95	41	318.64
N. ½ N. ½.....	7	"	"	150.52
N. E. N. W.....	3	96	"	39.04
S. E. N. E.....	15	"	"	40.
S. W. S. W.....	13	97	"	40.
All.....	1	95	42	642.26
All.....	5	"	"	630.82
N. E. N. E.....	7	"	"	40.
N. ½ N. ½.....	9	"	"	160.
All.....	3	96	"	646.16
S. ½.....	5	"	"	320.
E. ½ S. E.....	7	"	"	80.
All.....	11	"	"	640.
All.....	15	"	"	640.
W. ½.....	17	"	"	320.
All.....	23	"	"	640.
All.....	29	"	"	640.
E. ½ S. E.....	31	"	"	80.
All.....	33	"	"	640.
All.....	3	97	"	525.60
All (R-way 108 acres).....	9	"	"	638.92
All " 19.81 acres).....	17	"	"	620.20
E. ½ E. ½ (R-way 10.53 acres)...	19	"	"	149.47
All.....	25	"	"	640.
S. E. N. E. N. E. S. E.....	31	"	"	80.
S. ½.....	33	"	"	320.
All.....	35	"	"	640.

10,429.12

153

LIST OF LANDS IN CLASS NO. ONE, SCHEDULE "C."

Description.	Section.	Town.	Range.	Acres.
Pat'd All.....	29	98	40	640.
" S. E. N. W.....	7	96	41	40.
" W. ½.....	27	98	"	320.
Brought .....	..	..	..	1,000.
Total .....	..	..	..	10,429.12

CLASS NO. ONE (1), SCHEDULE "C."

LIST OF LANDS IN CLASS NO. FOUR (4), SCHEDULE "C."

Description.	Section.	Town.	Range.	Acres.
Pat'd S. ½.....	31	100	37	217.17
" All.....	5	82	33	641.58
" N. E. N. W.....	7	"	"	40.
" All.....	11	"	"	640.
" N. E. W. ½ N. W., N. ½ S", & S. E.	3	99	"	512.78
" S. E. N. E. & S. E.....	5	"	"	200.
" All.....	9	"	"	640.
" All.....	15	"	"	640.
" N. ½ S. W., N. ½ S. E., S. E. S. E..	23	"	"	600.
" N. ½.....	27	"	"	320.
" W. ½ W. ½.....	29	"	"	160.
" S. E. & W. ½ S. W.....	33	"	"	240.

" N. $\frac{1}{2}$ S. W., S. W. S. E.....	35	"	"	518.
" N. E., N. $\frac{1}{2}$ N. W., S. W. N. W....	19	100	"	261.58
" W. $\frac{1}{2}$	1	98	39	321.80
" N. W. & S. $\frac{1}{2}$	1	99	39	006.25
" S. E.....	11	"	"	160.
" S. $\frac{1}{2}$	23	"	"	320.
" S. $\frac{1}{2}$	29	"	"	320.
" N. $\frac{1}{2}$ N. $\frac{1}{2}$	31	"	"	148.70
" All.....	33	100	"	640.
" S. E.....	35	"	"	152.75

CLASS NO. FOUR (4), SCHEDULE "C."

8,302.57

154

LIST OF LANDS IN CLASS NO. FOUR (4), SCHEDULE "C."

Description.	Section.	Town.	Range.	Acres.
All.....	15	98	38	640.
N. W. $\frac{1}{4}$	17	"	"	160.
S. $\frac{1}{2}$ N. W. & S. W.....	9	95	40	240.
S. $\frac{1}{2}$ N. $\frac{1}{2}$ S. $\frac{1}{2}$	11	"	41	420.
All.....	13	"	"	640.
All.....	15	"	"	640.
W. $\frac{1}{2}$	19	"	"	288.76
All.....	23	"	"	640.
All.....	25	"	"	640.
All.....	27	"	"	640.
All.....	23	"	42	640.
All.....	27	"	"	640.
S. $\frac{1}{2}$	29	"	"	320.
E. $\frac{1}{2}$ N. E. $\frac{1}{4}$	21	"	"	80.

6,688.76

Brought 8,302.57

CLASS NO. FOUR (4), SCHEDULE "C."

14,991.3

And we further certify and report that the items of the various expenses attending the execution of the said order, including our fees as commissioners, are contained in the schedule hereto annexed marked D and forming a part of this report.

In Witness Whereof, we, the said commissioners, have set our hands to this our report, this 25th day of October in the year of our Lord, one thousand eight hundred and eighty-six.

(Signed)

P. T. LOMAX,
JOHN A. ELLIOTT,
E. R. MASON,

Commissioners.

STATE OF IOWA,
County of Polk, ss:

Be It Remembered, that on this 25th day of October 1886, P. T. Lomax, John A. Elliott, and Edward R. Mason, to me known to be the persons who subscribed the foregoing report appeared before me, the undersigned, and acknowledged the execution of the foregoing report, and that the same was their free act and deed for the uses and purposes therein mentioned.

(Signed)

[NOTARY SEAL.]

JOHN D. JORDAN,
Notary Public.

Endorsement: No. 481. Equity. Chicago, Milwaukee & St. Paul Railway Company vs. Sioux City and St. Paul Railway Company, Commissioners' Report on partition of land. Filed October 25th, 1886. E. R. Mason, Clerk.

155 In the Circuit Court of the United States, for the Southern District of Iowa, Central Division.

I, E. R. Mason, Clerk of said Court for said district, do hereby certify that the transcript hereto attached contains a full, true and complete copy of the commissioners' report and order confirming the same in a certain cause adjudicated in said Court wherein the Chicago Milwaukee & St. Paul Railway Company was complainant and the Sioux City & St. Paul Railroad Company et al., were defendants as full, true and complete as the original of the same now remains on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court at my office in Des Moines, in said district this 6th day of November A. D. 1886.

[SEAL.]

E. R. MASON,
Clerk U. S. C. C., Southern District of Iowa.

STATE OF IOWA,
O'Brien County, ss:

Filed for record this 3rd day of December A. D. 1886 at 10 o'clock A. M., and recorded in Book A of Miscellaneous Records on page 264 of O'Brien County, Records.

W. H. MOYES,
Recorder, Deputy.

STATE OF IOWA,
Dickinson County, ss:

Filed for record December 10th, 1886, at 11 o'clock A. M., and recorded in Book "J" of Deeds on page 166.

No. 36.

C. C. PERRIN, Recorder.

STATE OF IOWA,
Osceola County, ss:

Filed for record this 16th day of November A. D. 1886, at 11 o'clock A. M., and recorded in Book 4 of Miscel. On page 143.

MRS. C. I. HILL, Recorder.

STATE OF IOWA,
O'Brien County, ss:

I, F. L. Herrick, Recorder in and for the County of O'Brien, and State of Iowa, do hereby certify, that I am the custodian of the records of said county, and that a Commissioners' Report and Order of Court confirming same, from Chicago, Milwaukee & St. Paul Railway Company vs. Sioux City & St. Paul Railroad Co., was filed for record on the 3rd day of December

A. D. 1886, and was recorded in record Miscel. "A" on page- 244 to 253 inclusive; that said record is one of the records of said county, and that the copy of said instrument which is hereto annexed, marked Exhibit "A" is a full, true and correct copy of the same as appears of record in my office.

Witness my hand at Primghar, Iowa, this 6th day of March A. D. 1896.

F. L. HERRICK,
Recorder of O'Brien County, Iowa.

EXHIBIT No. 19.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., July 26, 1887.

The Commissioner of the General Land Office.

SIR: In January last an application was filed in this department in behalf of certain settlers in O'Brien County, Iowa, asking that suit be commenced and prosecuted in the name of the United States to assert title to about 55,297.21 acres of land in said O'Brien County Iowa, claimed by the Sioux City & St. Paul Railroad Company, and the Chicago, Milwaukee & St. Paul Railway Company respectively, under and by virtue of the grant to the State of Iowa by Act of Congress approved May 12, 1864 (13 Stat. 72).

Applicants aver that neither of the companies mentioned has earned the lands in question, nor any of them: that they, the said applicants, are settlers upon said lands, and that they are seeking to acquire titles to the same under the settlement laws of the United States.

Section one of said act of 1864, enacts, "That there be and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of a railroad from Sioux City, in said State to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux and the West fork of the Des Moines River; also to said State for the use and benefit of the McGregor Western Railroad Company, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main Street, South McGregor, in said State, in a westerly direction by the most practicable route, on or near the forty-third parallel of north latitude until it shall intersect the said road
157 running from Sioux City to the Minnesota State line in the county of O'Brien, in said State, every alternate section of land designated by odd numbers for ten sections in width on each side of said roads; but in case it shall appear that the United States have when the lines or routes of said roads are definitely located, sold any section, or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected, for the

purposes aforesaid, from the public lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections designated by odd numbers as shall be equal to such lands as the United States have sold, reserved or otherwise appropriated or to which the right of homestead settlement or pre-emption has attached as aforesaid, which lands thus indicated by odd numbers and sections, by the direction of the Secretary of the Interior, shall be held by the State of Iowa for the uses and purposes aforesaid. Provided, That the lands so selected shall in no case be located more than twenty miles from the lines of said roads. Provided further, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or other purpose whatever, be and the same are hereby reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the routes of said roads through such reserved land in which case the right of way shall be granted, subject to the approval of the President of the United States."

Section four enacts:

"That the lands hereby granted shall be disposed of by said State, for the purposes aforesaid only, and in manner following namely; When the Governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a good, substantial and workmanlike manner as a first-class railroad, then the Secretary of the Interior shall issue to the State, patents for one hundred sections of land for the benefit of the road having completed the ten consecutive miles as aforesaid. When the Governor of said State shall certify that another section of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said State in like manner, for a like number;

and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are from time to time made as aforesaid, additional sections of lands shall be patented as aforesaid, until said roads, or either of them are completed when the whole of the lands hereby granted shall be patented to the State for the uses aforesaid and none other. Provided, That if the said McGregor Western Railroad Company, or assigns shall fail to complete at least twenty miles of its said road during each and every year from the date of its acceptance of the grant provided for in this act, then the State may resume said grant and so dispose of the same as to secure the completion of a road on said line, and upon such terms, within such time as the State shall determine. Provided, further, That if the said roads are not completed within ten years from their several acceptance of this grant, the said lands hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of the said roads within such time, not to exceed five years, and upon such terms as the State shall determine. And provided, further, That said lands shall not in any manner be disposed of or en-

cumbered, except as the same are patented under the provisions of this act; And should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States".

The State of Iowa, by act of the legislature, approved April 2, 1866 (Session laws 1868 chapter 134) accepted the grant of 1864, and conferred upon the Sioux City & St. Paul Railroad Company a body corporate existing under and by virtue of the State of Iowa, so much of the grant by Congress as related to a line of road from Sioux City to the south line of the State of Minnesota. April 20, 1866, another act of the legislature was approved, reiterating the acceptance by the State of the grant of Congress, and announcing that any lands patented to the State under the provisions of the act of Congress would be held by it in trust for the benefit of the railroad company entitled thereto, and should be passed to such company "as shall be ordered by the legislature." (Session laws, 1866, chapter 144).

September 12, 1866, the Sioux City & St. Paul Railroad Company accepted the grant and in July 1867 filed in this department a map showing the line of its road as definitely located from Sioux City to a point in Sec. 12, T. 100 N. R. 41 W on the south line of Minnesota. Said line of road as located is eighty-three miles and fifty-two rods in length. The map thus filed was accepted by this

department as "the basis for the adjustment of the land grant" August 26, 1867, the Commissioner of the General Land Office withdrew from market the odd numbered sections within the ten and twenty miles limits of the line of the road.

The Sioux City company began at the Minnesota State line to construct its road, and built south towards Sioux City.

July 26th, 1872, the Governor of the State of Iowa certified, as provided in the fourth section of the act of Congress making the grant, that two sections of ten miles each of the road had been constructed as required by said act.

August 10, 1872, he certified in like manner to the completion of another section of ten miles; and on February 4, 1873, he certified to the completion of two more sections of ten miles each, being in all fifty miles of road completed and certified as required.

Prior to January 1, 1872, the company had constructed a continuous line of road from the Minnesota State line to Le Mars, a distance of fifty-six and a quarter miles, and a map of construction road for the distance named was certified by the Governor, February 4, 1872, and filed in this Department July 10, 1872. Patents were issued to the State for the benefit of the Sioux City & St. Paul Railroad Company as follows:

October 1, 1872, for list embracing.....	191,464.04 acres
June 17, 1873, for list embracing.....	205,274.76 acres
January 25, 1875 for list embracing.....	10,911.41 acres
June 4, 1877 for list embracing.....	160.00 acres

Total 407,910.21 acres

Of this amount it appears that forty acres were patented twice. The quantity actually patented to the State was therefore forty acres less than the above footings, makes it appear, or 407,870.21 acres. Of the land so patented, it appears 212,067.66 acres are within the ten miles or granted limits, and 195,843.55 were patented as indemnity.

As only five sections of ten miles each of the road had been certified by the Governor as completed, the maximum amount for which under section four of the granting act, authority was given to issue patents to the State, was 320,000. acres; 407,910.21 acres less 220,000 leaves 87,910.21 patented inadvertently and without authority of law.

March 12, 1874, the Iowa Legislature passed an act authorizing the Governor to certify to the Sioux City Company all the 160 lands then held in trust for the benefit of said company (Laws of Iowa, 1874, Chapter 34).

The State passed title to the railroad company for all of the 407,910.21 acres, except 85,457.40 acres, which it withheld and which have never been certified to the company, though it still claims title to them, or to such of them as have not, by the decision of the Supreme Court of the United States, (117 U. S. 406) been awarded to the Chicago, Milwaukee & St. Paul Railway Company.

The Chicago Milwaukee & St. Paul Railway Company having by legislation of the State of Iowa become the successor of the McGregor Western Railway Company as beneficiary under the grant of Congress, made by the act of 1864 (the same act under which the Sioux City Company claims) completed its line of road to the point of intersection with the line of the Sioux City Company at Sheldon, in O'Brien County.

The act of 1864 required that the point of intersection of the two roads named therein should be in O'Brien County.

For the sake of brevity, the Sioux City & St. Paul Railroad Company will be referred to in the further discussion of this case as the Sioux City Company, and the Chicago Milwaukee & St. Paul Railway Company as the Milwaukee Company.

The limits of the two lines were thus made to overlap for a considerable distance. The lands in said overlapping limits became the subject of controversy between the Milwaukee Company, and the Sioux City Company, the first named claiming that there were in the overlapping limits, of the two roads, 189,184.50 acres, which had been mistaken patented to the State of Iowa for the benefit of the Sioux City Company, and which should have been patented for the benefit of the Milwaukee Company. That of the said 189,184.50 acres thus wrongfully and mistakenly patented to the State, 112,280.08 acres had been wrongfully and mistakenly certified by the Governor of Iowa to the Sioux City Company.

The Milwaukee Company, complainant, asked that this patent from the United States and the conveyance from the State to the Sioux City Company be cancelled and set aside, so far as the same conveyed any title to the defendant company, and that it (the complainant) should recover the lands. The case finally came before

the Supreme Court of the United States on cross appeals, neither company being satisfied with the decree of the Circuit Court, which had awarded to each one undivided half of the lands in dispute.

161 The Supreme Court, under date of March 29, 1866 (117 U. S. 406) after stating that the quantity of lands within the overlapping limits of the two roads was, as shown by the record, 189,595.24 acres, decided that they should be awarded as follows:

Lands within the common granted, and common indemnity limits, to each company an undivided half: lands within the granted limits of the Milwaukee road, and within the indemnity limits of the Sioux City road, all to the Milwaukee Company: lands within the granted limits of the Sioux City road and within the indemnity limits of the Milwaukee road, all to the Sioux City Company.

The Circuit Court was instructed to render a decree accordingly, which it subsequently did. The effect of the decree was to dispose of the 189,595.24 acres by awarding to the Sioux City Company 110,159.94 acres, and to the Milwaukee Company 79,435.41 acres.

In the meantime, while the suit was pending in the courts, the Iowa Legislature passed an act, approved March 16, 1882, resuming all the lands and rights conferred upon the Sioux City Company by the Act of Congress of May 12, 1864, which had not theretofore been earned by said company (Laws of 1882 Chap. 107).

March 27, 1884, another act of the legislature was approved, which by its first section relinquished and conveyed to the United States the lands resumed and intended to be resumed by the act of 1882 (*supra*) and by its second section it provided for the certification by the Governor to the Secretary of the Interior of all lands which had been patented to the State, but which had not by the State been patented to the Sioux City Company, but nothing in said act was to be construed as applying to lands situated in the counties of Dickinson & O'Brien. Said act also provided that the list of lands so certified by the Governor should be presumed to be the lands relinquished and conveyed by the first section thereof. (Iowa Laws of 1884 Chapter 71.)

January 12, 1887, the Governor of Iowa duly certified to this Department in accordance with the act of the legislature above mentioned, a list of lands which had been patented to the State, but which had not by the State been transferred to the Sioux City Company. Said list embraces 26,117.33 acres in the counties of

162 Plymouth, Sioux, and Woodbury, and is now before me for consideration and action, but is not involved in the matter now being considered.

The Iowa legislature, authorizing the certification as above, followed and apparently was the result of a suggestion made by my predecessor, Secretary Teller, in a communication, addressed by him to the Governor of Iowa, under date of February 6, 1883. In that letter after reciting certain facts relative to the granting act of 1864, and to the lands patented to the State thereunder, he used the following language:

"If there is no authority vested in you or any of the officers of the

State to revest the United States with the legal title to the unearned lands, I urge upon you the propriety of obtaining authority from the General Assembly, as early as possible, in order that such lands may be restored to the public domain.

"Unless some early action is taken looking to that end, it would become the duty of this Department to recommend a resort to legal proceedings for the restoration of such lands to the general government."

As has already been stated, the amount of land patented by the United States to the State for the benefit of the Sioux City Company was 407,910.21 acres, all of which was by the State certified to the Sioux City Company, except 85,457.40 acres, which the State withheld, deducting from the last named amount the 26,017.23 acres certified by the Governor back to the United States, and we have left 59,440.07 acres not certified or patented to the Sioux City Company, the beneficiary named in the patent to the State. Of the last named quantity 37,747.39 acres were awarded to the Milwaukee Company under the Supreme Court decision (*supra*) but are nevertheless embraced in this application for suit. It here becomes necessary to inquire how many acres of the 322,452.81 acres certified to the Sioux City Company by the State, were by said Supreme Court decision and the decree of the Circuit Court made pursuant thereto taken from said company and given to the Milwaukee Company by the partition made under decree. Within the common ten miles limits of the two roads were 50,539.72 acres patented to the State for the Sioux City Company.

Of this quantity there had been patented to the company	29,280.13 acres
Withheld by the State.....	21,259.60 acres
As the Milwaukee Company was awarded one-half of each of these quantities, it received of lands patented to Sioux City Company.....	
163 Of lands not patented to Sioux City Co...	14,540.06 acres
	10,629.80 acres
Total	25,269.86 acres

Within the common indemnity limits of the two roads were 42,188.93 acres, which had been patented to the State for the Sioux City Company.

Of this there had been patented to the company..	28,777.27 acres
Withheld by the state.....	13,411.66 acres

As the Milwaukee Company was awarded one-half of each of these quantities it received:

Of lands patented to Sioux City Company.....	14,388.63 acres
Of lands not patented to Sioux City Company....	6,705.83 acres
Total	21,094.46 acres

Within the ten mile limits of the Milwaukee road, but within the indemnity limits of the Sioux City road were 23,071.08 acres, which had been patented to the State for the Sioux City Company.

Of this there had been patented to the company..	12,658.83	acres
Withheld by the state.....	20,412.25	acres

These added	33,071.08	acres
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All of which was awarded to the Milwaukee Company.

Within the ten miles limits of the Sioux City road, but within the indemnity limits of the Milwaukee road were 63,796.24 acres, which had been patented to the State for the Sioux City Company.

Of this there had been patented to the Company..	60,184.75	acres
Withheld by the state.....	2,611.49	acres

These added would make.....	63,786.24	acres
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All of which was awarded to the Sioux City Company.

From the foregoing figures it appears that of the lands which had been patented to the Sioux City Company there were awarded under the decisions of the Supreme Court, to the Milwaukee Company:

Lands in granted limits of the Sioux City road...	14,640.06	acres
Lands in indemnity limits of Sioux		

City road.	14,388.63	
	12,658.83	27,047.46 acres

Total	41,687.52	acres
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164 The total award to the Milwaukee Company under the Supreme Court decision was 79,435.41 acres, 41,627.52 acres of which, as above shown, had been patented to the Sioux City Company; Deducting the last named amount from the total award, we have left, as the amount of the land patented to the State for the Sioux City Company, but not by the State patented to the company 27,747.89 acres. The quantity of land which the Sioux City Company, since the Supreme Court decision referred to, holds under patents from the State, may now be readily ascertained.

There were patented to the State for the benefit of the company deducting 40 acres twice patented.	407,870.21	acres
Of this the State withheld.....	85,457.40	acres

Amount patented to company.....	322,412.81	acres
Of this awarded to Milwaukee Company as above shown	41,687.51	acres

Still held by Company, under patents from State.	280,725.29	A.
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The next question suggested is, to what amount of land is the Sioux City Company entitled under the grant of Congress? Is it

entitled to patents for any portion of the 85,457.40 acres withheld from it by the State? As I understand it, the applicants for suit are asking the United States to recover 55,297.21 acres in O'Brien County, which amount constitutes a part of the 85,457.40 acres above mentioned, as withheld by the State.

It is claimed generally on behalf of applicants, that so far as the Sioux City Company is concerned, it has already received more land than it has earned, and that, if this were not true, the line of constructed road so deflects from the line of definite location that the company cannot lawfully assert a right to patent for the lands in question: also, that the company having failed to complete its entire line of road, has no legal or equitable title to those lands as against the United States or the settlers.

The Company claims that it has earned and is entitled under the grant to 6,400 acres per mile for the fifty-six and one quarter miles of road constructed, which would be 360,000 acres, and that after deducting from the lands patented for its benefit the amount decreed by the Supreme Court to the Milwaukee Company, there would remain a deficit of 21,525.20 acres which it has earned but which it cannot get out of all the lands patented to the State for its benefit.

165 As to the charge of deflection from the line of location, the Department, with the facts before it, and in the exercise of its discretion, passed upon the question years ago. By accepting the road, adjusting the grant and issuing patents on account thereof, it then determined that the line of constructed road was substantially upon the line of definite location. The question could then be avoided. It belonged solely to the Secretary of the Interior to determine said question, which was one largely within the discretion of the Secretary (16 Op., 457).

I find in the case no sufficient reason for re-opening and further considering that question. As to the charge that the Company failed to complete the entire line of road, and the claim that it therefore has no legal or equitable title to these lands, there can, I think, be no doubt that the company has earned and is entitled to its grant for the fifty miles of road constructed and certified in accordance with section four of the granting act. *Railroad v. Courtwright* (21 Wall., 210) *Van Wyck v. Knevals* (103 U. S. 360, 368). It was entitled, under section four of the granting act, to patents for every ten miles completed and properly certified as soon as such section of ten miles was so completed and certified.

This brings me to the question, how much land has the company earned, and is it entitled, under the grant, to the lands in question, or any of them? The records of the General Land Office show that there are, within the common granted limits of the two roads, 70,345.67 acres, one half of which, as grant in place, would go to each company. That would give to each company 35,172.83 acres within the common ten miles or granted limits.

It is strenuously urged, however, by both companies that they are each entitled to indemnity for the lands thus lost by grant to the other.

I am unable to conclude that such was the intention of Congress in making the grant. To say that it was would be to say in effect that in so far as the ten miles limits of the two grants overlap, the purpose of the granting act was to make what would amount to a double grant. Each company got a moiety of the lands in odd numbered sections within the common granted limits. Now should there be allowed to each company indemnity from the moiety lost by grant to the other, a quantity of land equivalent to all the odd and even numbered sections in said common granted limits would be passed under the granting act.

166 This, I think, could not be justified by any proper construction of the act, nor can I conceive it to have been intended by Congress.

The grant was of a moiety for each road within the common granted limits of both roads. This accords with the view expressed by the Supreme Court in the case of *St. Paul & Sioux City R. R. Co., vs. Winona & St. Paul R. R. Co.* (112 U. S. 720).

Either this is true or Congress by the same act twice granted the same lands. To say that it did, or intended to do this would be to say that it acted unreasonably or without a proper understanding of what it was doing. Now, since indemnity is allowed only for land granted and lost from the grant, and since in the common ten miles limits of those two roads only a moiety was granted, it follows that neither company has any legal claim for indemnity on account of the moiety granted to the other. Again it is urged in behalf of the Sioux City Company, that it has earned and is entitled to its grant for the full fifty-six and a quarter miles of road constructed, that is for the six and a quarter miles as well as for the five sections of ten miles each.

After a careful consideration of the granting act, I cannot concede the correctness of this proposition. Under the provisions of the fourth section of the act (which section has been quoted in full herein), it is clear that there is no authority for patenting lands under this grant, except upon certificate of the Governor of the [Stat-] to this Department, that ten consecutive miles of road have been "completed in a good substantial and workmanlike manner." The only exception to the manner of disposing of the lands, as above indicated, is that which may apply when the road is completed. The statute would seem to provide for the disposition of the lands for a fractional part of ten miles in that case, for it says that the whole of the lands granted shall then be patented.

This road has not been completed, but stops at Le Mars about twenty-six miles short of the point (Sioux City), to which under the grant it should have been constructed. The reasons given for not completing the road, certainly furnish no reason for disposing of the public lands otherwise than in conformity with the law.

The company stopped the building of its uncompleted road with a full knowledge of the requirements of the granting act as to the conditions on which — could get the lands. It is not therefore in position to complain, because it cannot get the lands for the six
167 and a quarter miles of road in question, and must accent the legal consequence of its own act. The company has hereto-

fore practically conceded its want of title or valid claim to lands on account of the six and a quarter miles of road, for it has been to Congress asking for legislation which would give it the lands for said six and a quarter miles, and it opposed a bill which proposed to refer the questions relative to the status of said lands to the courts for judicial determination. See report No. 45 Senate Committee on Public Lands, Forty-ninth Congress, first session: copy in the record.

From the foregoing, the following conclusions result as to the grant for the benefit of the Sioux City Company:

A full grant to it for the five sections of ten miles each, or fifty miles of road in a direct line would be 320,000 acres. Deducting from this the one-half of the land in the common granted limits granted for the benefit of the Milwaukee Company viz: 35,172.83 acres, and there remain as enuring to the Sioux City Company under the grant, at the most 284,827.17 acres. It has already been shown that said company now holds by patent under the grant 280,725.29 acres. The most that it can be said to be yet entitled to is 284,827.17 acres, less 280,725.29 acres, or 4,101.88 acres, to be gotten out of the 85,457.40 acres withheld by the State. But of this 85,457.40 acres the State has re-conveyed to the United States 26,017.22 acres, and the Supreme Court has awarded to the Milwaukee Company 37,747.89 acres. After deducting these quantities there remain in the State by patent from the United States 21,692.18 acres from which to get the 4,101.88 acres, which appear to be still due the company as earned lands under the grant. The difference between these two quantities is 17,590.30 acres, which amount of land the State holds by patent for the company, to which the company is not entitled, and for the recovery of which, in my judgment, suit should be brought.

Thus much with reference to the application is so far as it affects the Sioux City Company.

* * * * *

With reference to the Sioux City Company and its claims and rights, I have, for the reasons assigned in the first part of this paper concluded to request that suit be instituted, in the name of the United States, with a view of having declared in the United States the title to 17,590.30 acres of land in odd numbered sections, in O'Brien County, Iowa, claimed by the Sioux City Company under the grant of 1864.

168 You will please complete the adjustment of the grant in accordance with the views herein expressed, and make demand in compliance with the requirements of section two of the act of March 3, 1887, (24 Stat. 556), upon the St. Paul & Sioux City Railroad Company, and upon the State of Iowa, for the relinquishment and reconveyance to the United States of the 17,590.30 acres, above referred to, or such quantity as the completed adjustment, in accordance with the principles herein enunciated, may show to be wrongly held by the State under patents from the United States.

If relinquishment and reconveyance be made, you will return the case to this Department, with your report thereon, for further

action; if there be neglect or failure to so reconvey within ninety days after demand as aforesaid, you will promptly report the fact to this Department and return the record, in order that the Attorney-General may be requested to institute suit for the recovery of the lands in question.

I transmit herewith the application for suit, filed in behalf of settlers upon the lands in question, together with briefs filed by counsel for the respective railroad companies, and by counsel for the Western Land Company, assignee of the Milwaukee Railway Company; also other papers and records applicable to the case.

Very respectfully,

L. Q. C. LEMAR, *Secretary*.

EXHIBIT 20.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., August 11, 1887.

Hon. Wm. Larrabee, Governor of Iowa.

SIR: I enclose herewith a copy of the decision of the Secretary of the Interior of July 26th ult., upon an application in behalf of certain settlers in O'Brien County, Iowa, for the institution of suit by the United States to recover title to some 55,297.21 acres of land in said county, which has been patented to said State for the Sioux City & St. Paul Railway Company, and claimed by said company, and the Chicago, Milwaukee & St. Paul Railway Company, under the act of Congress approved May 12, 1864 (13 Stat., 72).

With reference to the Chicago, Milwaukee & St. Paul Railway Company the Secretary finds that said company is entitled to all the lands in O'Brien County Decreed and partitioned to 169 it by decision of the Supreme Court of the United States (117 U. S. 406) and declines to request the institution of suit to recover title to any of said lands.

With reference to the Sioux City & St. Paul Company, the Secretary decided that the grant by act of May 12, 1864, was a grant in place, and that while the company constructed fifty-six and one fourth miles of road, that it is entitled to lands for five full sections of ten miles each, or fifty miles only of road, and that it is not entitled to indemnity for the moiety in the common ten mile granted limits awarded to the Chicago, Milwaukee & St. Paul Company by the Supreme Court, and directs the adjustment of the grant accordingly.

It is found upon examination of the grant that the gross area of the odd numbered sections within the ten mile granted limits for fifty miles of road is 314,364.54 acres. The area within the common ten mile granted limits is 69,818.76 acres and a moiety of this 34,909.38 deducted from the gross area within the granted limits leaves 279,427.16, as the greatest possible amount that could be earned by the Sioux City & St. Paul Company.

The records show that there have been patented to the State for

the company (less 40 acres patented twice), 407,870.21 acres. Of this amount the State withheld from the company because of its failure to complete the construction of its road, 87,457.40 acres, leaving 322,412.81 acres patented to the company. Of this quantity the Supreme Court in the decision above cited awarded to the Chicago, Milwaukee & St. Paul Company 41,687.52 acres, which, deducted from the 322,412.81 acres, leaves 280,725.29 acres actually held by the company by patent from the State. As the greatest amount possible for the company to earn by the construction of fifty miles of road is 279,437.16 there is a clear excess of 788.12 acres patented to the company.

Upon a complete and final adjustment of the grant, which cannot be made until certain questions affecting the right of indemnity selection are determined, a further excess may be found, and if so, the proper steps will be taken to recover it.

Of the 84,457.40 acres patented to the State, but withheld from the company, 26,017.38 acres have been reconveyed to the United States and ordered restored to market, and 27,747.89 acres have been awarded to the Chicago, Milwaukee & St. Paul Company by decision of the Supreme Court (*supra*) leaving 21,692.18 acres still withheld by the State.

170 As directed by the Secretary of the Interior, you are hereby requested to reconvey to the United States this 21,628.18 acres. The Secretary further directs that in the event of neglect or failure to make the reconveyance within ninety days from the receipt of this demand, that the fact be promptly reported to him and the record returned to him and the record returned in order that the Attorney General may be requested to institute suit for the recovery of the land.

Please acknowledge receipt of this letter.

Very respectfully,

S. M. STOCKSLAGER,
Acting Commissioner.

EXHIBIT No. 21.

Railroad Grant—Suit to Recover Title—Act of March 3, 1887.

Sioux City & St. Paul R. R. Co.

Suit requested for the recovery of title, the company having failed after due demand, to reconvey the lands found to have been improperly patented for its benefit.

Acting Secretary Muldrow to the Attorney General January 11, 1888.

In January, 1887, an application was filed in this Department in behalf of certain settlers in O'Brien County, Iowa, asking that suit be commenced and prosecuted in the name of the United States to assert title to about 55,297.21 acres of land in O'Brien County,

claimed by the Sioux City & St. Paul Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company, respectively, under and by virtue of the grant to the State of Iowa by act of Congress, approved May 12, 1864. (13 Stat. 72.)

Applicants aver that neither of the companies mentioned has earned the lands in question, nor any of them, that they the said applicants, are settlers upon said lands, and that they are seeking to acquire title to the same under the settlement laws of the United States.

Said application was considered and acted upon by this Department July 26, 1887 (6 L. D. 54), after full argument orally and by briefs filed in behalf of the applicants, and the railroad companies respectively.

In that decision the conclusion was reached that in so far as the application had reference to the Chicago, Milwaukee and St. Paul Railway Company there is no good ground for requesting the institution of suit as asked.

With reference to the Sioux City and St. Paul Railroad Company however, it was decided that more land had been patented to the State of Iowa for the benefit of the company than it is entitled to under the grant by act of Congress approved May 12, 1864 (13 Stat., 72).

The Commissioner of the General Land Office was directed to complete the adjustment of the grant in accordance with the views expressed in said departmental decision, and to make demand in compliance with section two of the act of March 3, 1887 (24 Stat. 556) upon the Sioux City and St. Paul Railroad Company, and upon the State of Iowa for the relinquishment and reconveyance to the United States of the excess found by the adjustment to be wrongfully held under patents from the United States; the Commissioner was further directed to make report to this Department whether the company and State did or did not relinquish and reconvey with a view, in case of neglect or failure to so reconvey, of requesting you to institute suit for the recovery of the lands wrongly held. That report dated January 7, 1888, has been made and is now before me. It sets out that the adjustment shows 21,692.18 acres of unearned lands held by the State under patents from the United States for the benefit of the Sioux City Company, and 788.13 acres which have been by the State passed to the Company in excess of the amount earned; also that there has been a failure on the part of the company and of the State to reconvey as requested.

With said report are submitted copies of letters from the General Land Office to the Governor of Iowa, and to the President of the railroad company, together with such replies as were made to said letters.

The Acting Commissioner who makes the report has also returned therewith the entire record in the case as it was before the Department when the decision of July 26, 1887, was rendered.

I have now the honor to forward to you said report together with accompanying papers and exhibits, and to request that suit be instituted in the proper court in the name of the United States, with

a view to having title to the lands referred to herein and in department decision of July 27, 1887, as unearned by the Sioux City and St. Paul Railroad Company declared in the United States, if after examination and consideration you deem such suit advisable.

172 Reference is made to said departmental decision of July 26, 1887, (a printed copy of which is herewith marked A) for a fuller recital of facts and for the reason in detail upon which this request is based.

EXHIBIT No. 22.

A. M. Drake, W. P. Jewett, Trustees for Land Grant Bonds.
W. P. Jewett, Land Commissioner.

Omaha Line.

Sioux City & St. Paul Railroad Company.
Land Department.

ST. PAUL, MINN., May 23, 1900.

Honorable Commissioner of the General Land Office, Washington,
D. C.

SIR: By an act of Congress approved May 12, 1864, (13 Stat. 72), a grant of lands was made by Congress to the State of Iowa to aid in the construction of two certain lines of railroad, one of which was the Sioux City & St. Paul to be constructed from Sioux City to the Minnesota State line.

This grant was conferred upon the Sioux City & St. Paul Railroad Company by an act of the General Assembly of Iowa, approved April 3, 1866 (Chapter 134 of Laws of Iowa, 1866).

On July 17, 1867, the Sioux City Company filed in the General Land Office a map showing the location of its route from Sioux City, Iowa, northwardly, to the south line of the State of Minnesota, a distance of 83.52 miles, which map was duly accepted by the Secretary of the Interior, and by letter of the Commissioner of the General Land Office to the Register and Receiver at Sioux City, Iowa, dated Aug. 26, 1867, the odd numbered sections within the 10 and 20 mile limits of the located line were withdrawn from the market. Accompanying this letter was a map showing the 10 and 20 miles limits, and the Register and Receiver were directed to enter upon the plat on file in the land office the limits of said withdrawal as shown upon said map, the same defining the withdrawal of lands under the grant.

In 1887 the Commissioner of the General Land Office caused a map or diagram to be prepared, declared to be a more accurate delineation of the 10 and 20 miles limits of the Sioux City
173 & St. Paul land grant, and also caused an adjustment of the grant to be made which was declared to be an accurate measurement of the area of the odd numbered sections and parts of sec-

tions lying within the grant made by the act of May 12, 1864, for the construction of the Sioux City road.

Under date of January 11, 1888, the Secretary of the Interior transmitted to the Attorney General of the United States certain papers relative to an adjustment of the grant to the Sioux City & St. Paul Railroad Company as set forth in said letter (6 L. D. 481), said letter stating that a true copy of the Secretary's decision of July 26, 1887, accompanied said letter, and that the same was the basis of the action requested on part of the Attorney General by the Secretary of the Interior.

The Attorney General having had the matter under consideration finally determined to institute the action requested, and in October 1889, a suit was begun in the United States Circuit Court, for the Northern District of Iowa, to quiet title against the Sioux City & St. Paul Railroad Company for certain lands therein specially described, aggregating 21,979.85 acres.

A decree was entered in this action in favor of the United States (42 Fed. Rep. 617) from which appeal was had to the Supreme Court of the United States. This appeal was determined adversely to the railroad company by a decision of said Court, filed October 21, 1895. In considering the questions involved in the appeal and an examination of the evidence submitted in the action, Mr. Justice Harlan in delivering the opinion of the Court, stated, with other matters, in Paragraph 6; (159) U. S. 349-367).

"In the light of these principles, we come to the practical question presented for determination, namely,—whether the Sioux City Company, having failed to complete the road for the benefit of which the grant was made, has received as much of the public lands as it was entitled to receive under the Act of 1864. This is entirely a matter of figures."

Again in said paragraph the court uses the following language;

Upon the examination of the certified list of lands, based on the diagram originally furnished by the railroad company to the Secretary of the Interior, and transmitted by the General Land Office to the local land office on the 26th day of August 1867," etc.

174 Again in said paragraph the following language;

"In 1887 the Commissioner of the Land Office, having before him the question of how much of the public lands the Sioux City Company was entitled to receive, caused an accurate measurement to be made of the area of the odd numbered sections and parts of sections lying within the grant made by the act of May 12, 1864, for the construction of the Sioux City road."

Again in the said paragraph the following language:

"The result is that, if the diagram furnished by the railroad company in 1887 be followed, the Sioux City Company is entitled to 2,104.22 acres in addition to what it has received; whereas, if the measurement of 1887 made under the direction of the land office be accepted, that company has received 2,004.89 acres more than should in any case have been awarded to it."

The officers and attorneys of the railroad company however, have always been of the belief that the map of 1887 a copy of which was

transmitted to the Register and Receiver at Sioux City with letter of August 1887 above referred to was a copy of a map prepared in the General Land Office, and under the direction of the Commissioners of the General Land Office, and the officers and attorneys were much surprised that the Supreme Court of the United States should find as a fact that the diagram of 1887 was prepared by the railroad company.

As litigation is now pending in the District Court of O'Brien County Iowa, in which certain questions are involved, and their determination may depend upon the fact as to how, when and by whom the diagram of 1887 was prepared, I respectfully request an early reply to the following interrogatories;—

1. What is the general practice and custom in the General Land Office in the matter of the preparation of land grant limit maps as the basis of withdrawals under Congressional grants? Are such maps prepared and filed by the railroad or Wagon Road Companies, respectively in interest, or are such maps prepared under the direction of the Commissioner of the General Land Office as official maps of the United States, based upon maps of location duly filed and approved by the Secretary of the Interior?

2. If — any one or more instances maps of withdrawal have been prepared by the railroad or Wagon Road Companies interested, I should like to have such grants and maps described and identified.

3. Was any map other than the map of location of the line of the Sioux City & St. Paul Railroad Co. ever filed by said railroad company, or in its behalf, upon which or a copy of which any withdrawal was at any time made?

4. Was the map or diagram referred to in said letter of August 26, 1887, accompanying the said letter, a true copy of a map prepared in the General Land Office under the direction of the Commissioner of the General Land Office?

If there is any map on file in the General Land Office prepared by the said railroad company, a copy of which was made the basis of the withdrawal of 1887, I desire to be so informed, and of the amount necessary to obtain a certified copy thereof, and upon being so advised, I will promptly deposit the required fees to procure certified copy of the same.

Early attention to the subject matter hereof is respectfully requested.

Very respectfully,

W. P. JEWETT,
Land Commissioner.

W. K. M.

1900-62,629.

S. S. M.
W. C. C.
J. V. M.

Refer in reply to this Initial: F.

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., June 12, 1900.W. P. Jewett, Esq., Land Com's, S. C. & St. P. R. R. Co., St. Paul,
Minn.

SIR: Replying to your inquiry of the 23rd ult., I have to advise you that the limits of the railroad land grants have always been determined by this office on the basis of the definitely located line represented by maps filed by the companies and while such maps may in some instances have delineated thereon limits suggested by the company such limits have never been regarded as in any way controlling.

In the particular case of the Sioux City & St. Paul Road, the map of definite location of the road filed by the Company July 17, 1867 has marked thereon by direct lines but not by subdivisions of survey what are there designated as the 10 and 20 mile limits, but said lines were not regarded by this office in its determination of those limits and preparation of the official map of withdrawal, a copy of which was forwarded to the district officers August 26, 1867.

Very respectfully,

BINGER HERMANN,
Commissioner.

EXHIBIT 22.

Certified copy of Maps, prepared by the Commissioner of the General Land Office on the — day of — 1887.

Said maps from their nature, it is impossible and impracticable to attach hereto.

EXHIBIT 24.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas by the Act of Congress approved May 12, 1864 entitled "An Act for a grant of lands to the State of Iowa in alternate sections, to aid in the construction of a railroad in said State", "from Sioux City in said State, to the south line of the State of Minnesota, at such point as the State of Iowa may select, between the Big Sioux and the west fork of the Des Moines River", every alternate section of land designated by odd numbers, for ten sections in width, on each side of said road:

And Whereas, it is further enacted, that "in case it shall appear that the United States have, when the line or routes of said road is

definitely located, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement was attached to the same, then so much lands in alternate sections or parts of sections, designated by odd numbers as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the right of homestead settlement or pre-emption has attached, shall be held by the State of Iowa for the uses and purposes aforesaid: Provided, that the lands so selected shall in no case be located more than twenty miles from the line of said road".

And whereas, there has been filed in this office, through the Secretary of the Interior, under dates of July 26th and August 19th, 1872, and February 10, 1873, evidence of the completion of the first, second, third, fourth and fifth sections of ten miles each of the Sioux City and Saint Paul Railroad from the south line of the State of Minnesota, southerly to a point in section sixteen, township ninety-two, range forty-five, making in all fifty continuous miles of said road:

And whereas the sections and parts of sections of land inuring to the State of Iowa in aid of the construction of the Sioux City & Saint Paul Railroad for the said fifty miles of road have been selected and reported to this office in accordance with the act and the rules and regulations of the General Land Office as shown by the original lists of selections dated August 1st, 1872, and February 25th 1873, and certified under dates of August 1st, 1872, and March 6th, 1873, by the register and receiver at Sioux City Iowa, the said tracts being described as follows, to-wit;

North of Base Line and West of the Fifth Principal Meridian,
Iowa.

Ten Mile Limits, Sioux City, District.

* * * * *

The said tracts, as described in the foregoing pages from two to number nineteen, inclusive, containing the aggregate area of two hundred and five thousand three hundred and seventy-four acres and seventy six hundredths of an acre (205,374.76).

Now, know ye, that the United States of America, in consideration of the premises and pursuant to the said act of Congress, have given and granted and by these presents do give and grant unto the said State of Iowa, for the use and benefit of the Sioux City & Saint Paul Railroad Company of said State and its assigns, the tracts of lands selected as aforesaid, and described in the foregoing

To have and to hold the said tracts, with the appurtenances unto the said State for the use and benefit of the said Sioux City & Saint Paul Railroad Company, and its assigns forever.

In Testimony Whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this seventeenth

day of June in the year of our Lord, one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[SEAL.]

By the President. U. S. GRANT,

By S. D. WILLIAMSON,

Secretary.

EUGENE A. FISKE,

Acting Recorder of the General Land Office ad Interim.

EXHIBIT No. 25.

An act to resume all the lands and rights conferred upon the Sioux City & St. Paul Railroad Company by or under an act of Congress approved May 12, A. D. 1864, or lands not heretofore earned by said company.

Whereas, by an act of Congress approved May 12, A. D. 1864, entitled "An Act for a grant of lands to the state of Iowa in alternate sections to aid in the construction of a railroad in said State", certain lands were granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City in said state to the south line of Minnesota, at such point as the said state might select, between the Big Sioux River and the West Fork of the Des Moines River, which grant was made to and accepted by the state of Iowa upon the conditions, restrictions and qualifications therein named; and,

Whereas, by an act of the General Assembly of the state of Iowa approved April 3, A. D. 1868, so much of the lands, interests rights powers and privileges as were or might be conferred in pursuance of said acts of congress, to aid in the construction of the aforesaid road, were disposed of, granted and conferred upon the Sioux City & St. Paul Railroad Company; and

Whereas said act of congress further provides that if the road accepting said grant is not completed within ten years from its acceptance thereof, the lands thereby granted and not patented should revert to the state of Iowa for the purpose of securing the completion of said road; and

Whereas said Sioux City & St. Paul Railroad Company duly accepted said grant on the 20th day of September A. D. 1866, but has failed to complete or cause to be completed any road on the line adopted therefor, from Sioux City to LeMars, in said state of Iowa, or any road in lieu thereof.

Be It Enacted by the General Assembly of the State of Iowa;

SECTION 1. That all lands, and all rights to lands granted or intended to be granted to the Sioux City & St. Paul Railroad Company by said acts of Congress and of the General Assembly of the state of Iowa, which have not been earned by said railroad company by a compliance with the conditions of said grant, be and the same are hereby absolutely and entirely resumed by the state of Iowa, and that the same be and are absolutely vested in said state as if the same had never been granted to said railroad company.

Approved March 16, 1883.

EXHIBIT 26.

Whereas by an act of congress approved May 12, 1864, entitled "An Act for a grant of lands to the state of Iowa, in alternate sections, to aid in the construction of a railroad in said state," certain lands were granted to the state of Iowa for the purpose of aiding in the construction of a railroad from Sioux City, in said state, to the south line of Minnesota, at such point as the state might select, between the Big Sioux and the West Fork of the Des Moines river, which grant was made to and accepted by the state of Iowa, upon the conditions and restrictions and qualifications named therein, and,

Whereas, by acts of the General Assembly of the State of Iowa, approved April 3, A. D. 1866, and April 20, A. D. 1866, the lands, rights, powers, duties, and trusts conferred upon the state of Iowa by said act of congress were duly accepted on the part of the state of Iowa, and,

Whereas, by an act of the General Assembly of the state of Iowa, approved April 3, A. D. 1866, so much of the lands, interests, rights, powers and privileges as were or might be conferred in pursuance of said act of Congress to aid in the construction of the aforesaid road were disposed of, granted and conferred upon the Sioux City and St. Paul Railroad Company, and,

Whereas, said railroad company duly accepted said grant, but failed to complete said railroad as required by the terms and conditions of said grant: and

Whereas, by an act of the General Assembly of the state of Iowa approved March 16, A. D. 1883, all lands, and all rights to lands granted or intended to be granted to the Sioux City and St. Paul Railroad Company by said acts of Congress and of the general assembly of the state of Iowa, which had not been earned by said Railroad company by a compliance with the conditions of said grant were absolutely and entirely resumed by the state of Iowa and vested in said State as absolutely as though the same had never been granted to said railroad company; and,

180 Whereas it is desirable that all lands and rights to lands resumed by the State of Iowa as aforesaid should be conveyed to the and vested in the United States to the end that such lands shall be made subject to the use of actual settlers as provided by the acts of congress relating thereto, now, therefore,

Be It Enacted by the General Assembly of the State of Iowa:

SEC. 1. That all lands and all rights to lands resumed and intended to be resumed by chapter one hundred and seven (107) of the acts of the 19th general assembly of the State of Iowa are hereby relinquished and conveyed to the United States.

SEC. 2. The Governor of the State of Iowa is hereby authorized and directed to certify to the secretary of the Interior all lands which have heretofore been patented to the state, to aid in the construction of said railroad, and which have not been patented by the state to the Sioux City & St. Paul Railroad Company, and the list of lands

so certified by the Governor shall be presumed to be [same] the lands relinquished and conveyed by section 1 of this act.

Provided, that nothing in this section contained shall be construed to apply to lands situated in the counties of Dickinson and O'Brien.

Approved March 27, 1884.

EXHIBIT 27.

Relinquishment of the 26,017.33 Acres, Patented as Railroad Lands.

The Twentieth General Assembly by act approved April 2, 1864, relinquished and conveyed to the United States 26,017.33 acres of land that had been patented to the State of Iowa under act of Congress of May 12, 1864, to aid in the construction of a railroad from Sioux City to the southern boundary of Minnesota, and which lands had been withheld from the Sioux City & St. Paul Railroad Company because of the non-completion of the railroad, and the Governor was authorized and directed by said act to certify the said lands to the Secretary of the Interior, but he was prevented by an injunction of the court from making such certificate. In the latter part of the year 1886 the Governor received official notice that the injunction had been dissolved, and soon thereafter he executed and
181 transmitted the required certificate, which as per record of the same in this office is as follows:

"STATE OF IOWA,
EXECUTIVE DEPARTMENT.

To the Secretary of the Interior, Washington, D. C.:

Whereas, the following act was passed by the Twentieth General assembly of the State of Iowa; viz:

Chapter 71.

An Act to relinquish and re-convey to the United States all lands and rights to lands granted to the State of Iowa by the act of Congress entitled, "An Act for a grant of land to the State of Iowa, in alternate sections to aid in the construction of a railroad in the state of Iowa," approved May 12th, A. D. 1864, which have not been earned pursuant to the provisions of said act.

Whereas, By an act of Congress, approved May 12, A. D. 1864 entitled "An act for a grant of lands to the State of Iowa in alternate sections, to aid in the construction of a railroad in said State," certain lands were granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City in said State to the south line of Minnesota, at such point as the State might select between the Big Sioux and the west fork of the Des Moines River, which grant was made to and accepted by the State of Iowa, upon the conditions, restrictions and qualifications therein named; and,

Whereas, By acts of the General Assembly of the State of Iowa, approved April 3d, A. D. 1866 and April 20th A. D. 1866, the

lands, rights, powers, duties and trusts conferred upon the State of Iowa by said act of Congress, were duly accepted on the part of the State of Iowa, and,

Whereas, By an act of the General Assembly of the State of Iowa, approved April 3d, A. D. 1866, so much of the lands, interests, rights, powers and privileges as were or might be conferred in pursuance of said act of Congress to aid in the construction of the aforesaid road, were disposed of, granted and conferred upon the Sioux City & St. Paul Railroad Company; and,

Whereas, Said railroad company duly accepted said grant, but failed to complete said railroad as required by the terms and conditions of said grant; and,

182 Whereas, By an act of the General Assembly of the State of Iowa, approved March 16th, A. D. 1882, all lands and all rights, to lands granted or intended to be granted to the Sioux City & St. Paul Railroad Company by said acts of Congress and of the General Assembly of the State of Iowa, which had not been earned by said railroad Company by a compliance with the conditions of said grant was absolutely and entirely resumed by the State of Iowa, and vested in said State absolutely as though the same had never been granted to said railroad company; and,

Whereas it is desirable that all lands and rights to lands resumed by the State of Iowa as aforesaid should be conveyed to and vested in the United States, to the end that such lands shall be made subject to the use of actual settlers, as provided by the acts of Congress relating thereto, now, therefore,

Be It Enacted by the General Assembly of the State of Iowa:

SECTION 1. That all lands and all rights to lands resumed and intended to be resumed by chapter one hundred and seven (107) of the acts of the Nineteenth General Assembly of the State of Iowa are hereby relinquished and conveyed to the United States.

SEC. 2. The Governor of the State of Iowa is hereby authorized and directed to certify to the Secretary of the Interior all lands which have heretofore been patented to the State to aid in the construction of said railroad, and which have not been patented by the State to the Sioux City & St. Paul Railroad Company; and the list of land so certified by the Governor shall be presumed to be the lands relinquished and conveyed by section one of this act: provided, that nothing in this section contained shall be construed to apply to lands situated in the counties of Dickinson and O'Brien.

SEC. 3. This act being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register, a newspaper published at Des Moines, Iowa, and the Sioux City Journal, a newspaper published at Sioux City, Iowa.

Approved March 27th, 1884.

And Whereas, Soon after the passage of the said act of the General Assembly, the Governor was restrained by an injunction of the Court from making the certificate to the Secretary of the Interior as provided by said act: and

183 Whereas, Said injunction has been dissolved, as appears by official notice received by me:

Now, therefore, I, William Larrabee, Governor of the State of Iowa, do hereby certify that the following is a complete and accurate list of the lands relinquished and conveyed to *be* United States by the aforesaid act of the General Assembly of the said State, viz: (Here follows description of lands conveyed in Woodbury, Sioux and Plymouth Counties.)

And the said lands heretofore described are hereby certified, as authorized and directed by the second section of the act of the General Assembly aforesaid.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

Done at Des Moines this 12th day of January, A. D. 1887, and of the State of Iowa the forty-first.

[L. s.]

WM. LARRABEE.

By the Governor.

FRANK D. JACKSON,
Secretary of State.

EXHIBIT 28.

In the United States Circuit Court in and for the Northern District of Iowa, Western Division. October Term, 1890.

THE UNITED STATES OF AMERICA

VS.

THE SIOUX CITY & ST. PAUL R. R. CO., ELIAS F. DRAKE and AMHEREST H. WILDER.

Decree.

This cause having been heretofore fully argued by counsel and having been, on the 8th day of October, 1890, finally submitted to the Court, upon the pleadings and proofs, and taken under advisement, and now on this 18th day of December, 1890, said day being of the October Term, 1890, of said Court, being fully advised in the premises;

It is by said Court, ordered, adjudged, and decreed that the title to the lands, hereinafter described, to-wit—

Dickinson County.

Description.	Section.	Town.	Range.	Acres.
All	15	98	38	640.
N. W. $\frac{1}{4}$	17	98	38	160.
				<hr/> 800.

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O'Brien County.

Description.	Section.	Town.	Range.	Acres.
S. $\frac{1}{2}$ of N. W. & S. W.	9	95	40	240.
S. W. of N. W.	7	97	40	36.50
W. $\frac{1}{2}$	5	95	41	318.64
All	7	95	41	602.
S. E. $\frac{1}{4}$ & S. W. & S. $\frac{1}{2}$ of N. $\frac{1}{2}$...	11	95	41	480.
All	13	95	41	640.
All	15	"	"	640.
W. $\frac{1}{2}$	19	"	"	288.75
All	23	95	41	640.
All	24	"	"	640.
All	27	"	"	640.
N. E. of N. W.	3	96	"	29.94
S. E. of N. E.	15	"	"	40.
S. W. of S. W.	13	97	"	40.
E. $\frac{1}{2}$ of S. W. & N. E. of S. E.	25	"	"	120.
All	1	95	42	641.30
N. $\frac{1}{2}$ S. W., N. $\frac{1}{2}$ S. E. & S. E. S. E.	5	"	"	590.32
S. E. N. W., W. $\frac{1}{2}$ N. W. & S. E.	7	"	"	390.41
All	9	"	"	640.
S. $\frac{1}{2}$ N. E., S. $\frac{1}{2}$ N. W. & N. $\frac{1}{2}$...	11	"	"	560.
All	15	"	"	640.
All	17	"	"	640.
E. $\frac{1}{2}$ N. E., W. $\frac{1}{2}$ S. W./S. E. S. W. & S. E.	19	"	"	352.49
All	21	"	"	640.
All	23	"	"	640.
All	27	"	"	640.
S. $\frac{1}{2}$	29	"	"	320.
E. $\frac{1}{2}$ N. E. & S. E. N. W.	31	"	"	120.
All	3	96	"	646.16
S. $\frac{1}{2}$	5	"	"	320.
N. W. N. E. & E. $\frac{1}{2}$ S. E.	7	"	"	120.
All	11	"	"	640.
All	15	"	"	640.
W. $\frac{1}{2}$	17	"	"	320.
S. W. N. E., S. E. N. W., N. W. N. W.	19	"	"	116.17
All	23	"	"	640.
All	29	96	42	640.
E. $\frac{1}{2}$ S. E.	31	"	"	80.
All	33	"	"	640.
All	3	97	"	595.60
S. W. N. E., N. E. N. W. & N. W. S. E.	7	"	"	120.
All	9	"	"	640.
All	17	"	"	640.
E. N. E. & E. $\frac{1}{2}$ S. E.	19	"	"	160.
All	23	"	"	640.
S. $\frac{1}{2}$	29	"	"	320.
S. E. N. E. & N. E. S. E.	31	"	"	80.
S. $\frac{1}{2}$	33	"	"	320.
All	35	"	"	640.

21,179.85

185 be and the same is hereby established and quieted in the complainant, the United States of America as against the adverse claims of the defendant, The Sioux City & St. Paul R. R. Co., Elias F. Drake and Amherst H. Wilder, Trustees, in the mortgage in the pleadings described.

And it is further ordered and adjudged and decreed, that the said defendants and each of them be, and they are each forever barred and estopped from asserting any right, title, lien or claim to the said lands herein described, or any part or portion thereof adverse to the title of the complainant herein, The United States of America.

It is further ordered and adjudged that the claim and demand set up herein on behalf of the United States of America, complainant, to recover the value in money against the said Sioux City & St. Paul R. R. Co., of the lands received by said Company, in excess of the total amount earned by it under said grant, is hereby dismissed without prejudice to the right of complainant to sue and recover the same in any other proper proceeding.

It is further ordered, adjudged and decreed that complainant have and recover of the said defendants The Sioux City & St. Paul R. R. Co., Elias F. Drake and Amherst H. Wilder, the cost of this proceedings taxed at \$— and have due process therefor.

To all of which decree, and each and every part thereof, the said defendants and each of them duly excepted, and thereupon in open Court, said defendant duly prayed an appeal therefrom to the Supreme Court of the United States which appeal was duly allowed by the Court, the said appellant to give bond with sureties in the sum of one thousand dollars, in due form, and properly conditioned.

And it was thereupon duly agreed and stipulated in open Court by and between the said complainant and said defendants, that the maps used in evidence upon the hearing of this case, be made part of the transcript herein, without being copied, and that the same be certified up by the Clerk, as part of the record in the cause.

And thereupon, it appearing that the Chicago, Milwaukee & St. Paul Railway Company the intervenor herein, had filed its crossbill herein asserting its claim to parts of the realty hereinbefore described, but that no issue has yet been taken thereon, it was thereupon ordered that for the purposes of said crossbill, and the rights dependent thereon, this cause be continued until Friday, February 6th, 1891, at 10 A. M.

186 United States Circuit Court for the Northern District of Iowa.

I, A. J. Van Duzee, Clerk of said court for said District, do hereby certify that the foregoing transcript, contains a full, true and complete copy of the decree by the Court, Shiras J., in a certain cause pending in said cause, wherein the United States of America is plaintiff and The Sioux City & St. Paul R. R. Co. et al. are defendants, as full, true and complete as the original of the same now remains of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix

the seal of said Court at my office in Dubuque in said District this 20th day of December, A. D. 1890.

[SEAL.]

A. J. VAN DUZEE,
Clerk U. S. C. C., Northern District of Iowa.

EXHIBIT 29.

Extract from the Biennial Message of Governor Gear, January 12th, 1882.

"On May 12, 1864, Congress granted to this State certain lands to aid in the construction of a railroad from Sioux City to the south line of the State of Minnesota at such points as the State should select between the "Big Sioux" and the "West Fork of the Des Moines River." This grant was designed to aid in constructing a line from Sioux City to St. Paul, and was a virtual continuation of a branch line of the Union Pacific Railroad, contemplated by the act for the construction of that road passed in 1862, and to be built from the Sioux City to some point on that railroad east of the one hundredth meridian."

"By chapter 144 of the acts of the Eleventh General Assembly which took effect May 20, 1868, this State accepted the grant which was by the same General Assembly conferred on the Sioux City & St. Paul Railroad Company. This company built its road from the southern line of Minnesota, in the direction of Sioux City, as far as LeMars, at which point it intersects the Iowa Falls & Sioux City Railroad, now operated by the Illinois Central Railroad Company, on which road the former company has trackage into Sioux City. Thus far the road was built in 1872, since which time the lands along the completed line for fifty miles have been certified to the company, aggregating 322,000 acres, or a little more than the amount to which the company was entitled under the act of Congress. In 1878 the company requested me to certify to it the remainder of the Lands, amounting to between 85,000 and 90,000 acres. This I declined to do, on the ground that the company had not complied with the terms of the grant, which provided

187 for a line from Sioux City to the south line of the State of Minnesota. Had the road been completed to Sioux City, the lands would have been certified, but I cannot be persuaded that a road terminating at LeMars can be fairly constructed to have been built to Sioux City even if the railway company has trackage to that place over another line much less from Sioux City."

"The act of May, 1864, required the construction of the road within ten years after the acceptance of the grant by the State, after which the State had five years further to complete the work. By not completing the line to Sioux City within the time prescribed, it will be seen that the Sioux City & St. Paul Railroad Company has forfeited all its right to the uncertified portions of the grant. It therefore becomes the duty of the General Assembly to take such steps as may be deemed advisable for the purpose of securing the com-

pletion of the road contemplated in the act of Congress. The original intent of the act was to make Sioux City a point on a great national highway between the Union Pacific Railroad and the great lakes, and to give the people along the line contemplated the benefit of the facilities thus to be afforded. The General Assembly should see to it that to the best of its ability, the lands yet within the control of the public shall be utilized in order to secure the completion of the line for which they were intended."

EXHIBIT No. 30.

6-5207.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., Nov. 18, 1895.

Register and Receiver, Des Moines, Iowa.

SIR: During the years 1872, 1873 and 1875 certain lands were patented to the State of Iowa under the act of Congress approved May 12, 1864, for the Sioux City and Saint Paul Railroad Company. Said company failed to complete the construction of its road as definitely located, and the State withheld from it 85,457.40 acres of the land so patented, as not having been earned. Of the lands patented for the Sioux City Company, the Chicago, Milwaukee & Saint Paul Company recovered 41,867.52 acres, which included a part of these lands, another part thereof was reconveyed to the United States by the State of Iowa and were restored to entry and for the balance of the United States instituted suit against the Sioux City Company for the recovery of title. That suit was decided October 21, 1895, by the Supreme Court, in favor of the United States, and said court on the same day decided that the Milwaukee Company which had been allowed to intervene as a defendant, had no interest in the lands, and that there was no foundation for a suit by said company to compel the United States to surrender any title it may have, however such title may have been acquired.

This leaves the title to the lands involved in the suit in the United States and subject to disposal by the Department.

Therefore in order to carry their restoration to entry into effect, you will cause to be published for a period of thirty days, in some newspaper of general circulation in the vicinity of the lands, a notice that said lands, a particular description of which will be published with the notice are restored to the public domain and will be subject to the entry on a day to be affixed by the notice which shall be ninety (90) days from the date of the first publication and that all persons claiming any part thereof under the act of March 3, 1887 (24 Stat. 556) must come forward within the ninety days immediately following the first publication, and give notice of their claims by publishing their notice of intention to make proof in accordance with the requirements of the circular of February 13, 1889 (8 L. D.

348) upon a day which shall be subsequent to that affixed for the restoration.

To the end that complications which might arise from the former practice of suspending applications for these lands may be avoided, and the rightful claimants be enabled to acquire title with as little delay as possible, I have to direct that in the notice of restoration there be inserted a notice to all prior applicants, that their applications confer no rights upon them, and that upon the day set by you for the restoration, the lands will be open to entry and disposal without regard to such applications, which shall be held by the notice to be rejected.

That all such applicants may, however, have opportunity to present new applications upon the expiration of the ninety days' notice, you will notify specially all parties shown by your records to have pending applications for these lands, of the rejection thereof, of the date of the restoration, and of the necessity of presenting new applications for the protection of their rights.

In all cases of conflicting claims, you will proceed in accordance with the rules of practice in contest cases.

189 A list of the lands to be restored by descriptive subdivisions is enclosed herein.

You will promptly forward a copy of the newspaper containing the notice of the restoration, for the information of this office.

The receiver, or disbursing officer, will pay the costs of publication and forward a copy of the notice, with proof of publication, as his voucher for the disbursement.

Very respectfully,

S. W. LAMOREAUX,

Commissioner.

Appd.,

HOKE SMITH, *Secretary.*

List of Lands Involved in Suit of United States vs. Sioux City and Paul R. R. Co'y.

Dickinson County.

Description.	Section.	Town.	Range.	Acres.
All	15	98	38	640.
N. W. $\frac{1}{4}$	17	98	38	160.
				800.

O'Brien County.

Description.	Section.	Town.	Range.	Acres.
S. $\frac{1}{2}$ of N. W. S. W.	9	95	40	240.
S. W. of N. W.	7	97	"	36.50
W. $\frac{1}{2}$	5	95	41	318.64
All	7	"	"	602.
S. E. & S. W. & S. $\frac{1}{2}$ of N. $\frac{1}{2}$	11	"	"	480.
All	13	"	"	640.
All	15	"	"	640.
W. $\frac{1}{2}$	19	"	"	288.76
All	23	"	"	640.
All	25	"	"	640.
All	27	"	"	640.
N. E. of N. W.	3	96	"	39.94
S. E. of N. E.	15	"	"	40.
S. W. of S. W.	13	97	"	40.
E. $\frac{1}{2}$ pt. S. W. & N. E. of S. E.	35	"	"	120.

Description.	Section.	Town.	Range.	Acres.
All	1	95	42	641.36
N. $\frac{1}{2}$ S. W., N. $\frac{1}{2}$ S. E. & S. E. of S. E.	5	"	42	500.82
S. E. N. W., W. $\frac{1}{2}$ S. W. & S. E., N. W. N. E. & E. $\frac{1}{2}$ N. E.	7	"	"	300.41
All	9	"	"	640.
S. $\frac{1}{2}$ N. E. S. $\frac{1}{2}$ N. W. & S. $\frac{1}{2}$...	11	"	"	560.
All	15	"	"	640.
All	17	"	"	640.
E. $\frac{1}{2}$ N. E. W. $\frac{1}{2}$ S. W., S. E. S. W. & S. E.	19	"	"	353.49
All	21	"	"	640.
All	23	"	"	640.
All	27	"	"	640.
S. $\frac{1}{2}$	29	"	"	320.
E. $\frac{1}{2}$ N. E. & S. E. N. W.	31	"	"	120.
All	3	"	"	646.16
S. $\frac{1}{2}$	5	"	"	320.
N. W. N. E. & E. $\frac{1}{2}$ S. E.	7	"	"	120.
All	11	"	"	640.
All	15	"	"	640.
W. $\frac{1}{2}$	17	"	"	320.
S. W. N. E., S. E. N. W., N. W. N. W.	19	96	42	116.17
All	23	"	"	640.
All	29	"	"	640.
E. $\frac{1}{2}$ S. E.	31	"	L	80.
All	33	"	"	640.
All	3	97	"	505.00
S. W. N. E., N. E. N. W., & N. W. S. E.	7	97	"	120.
All	9	"	"	640.
All	17	"	"	640.
E. $\frac{1}{2}$ N. E. & E. $\frac{1}{2}$ S. E.	19	"	"	160.
All	27	"	"	640.
S. $\frac{1}{2}$	29	"	"	320.
S. E. N. E. & N. E. S. E.	31	"	"	80.
S. $\frac{1}{2}$	33	"	"	320.
All	35	"	"	640.

21,179.85

EXHIBIT No. 31.

No. —. Land Department of the Sioux City and Saint Paul Railroad Company.

This Agreement, Made this — day of — in the year 18— between the Sioux City and St. Paul Railroad Company, and Elias F. Drake and Amherst H. Wilder, Trustees named in a certain Trust Deed, executed by said Company, and dated August 1st, 1871, of the first part, and — of the County of — State of Iowa, — of the second part;

191 Witnesseth; That in consideration of the stipulation herein contained, and the payments to be made as is herein after specified, the first party hereby agrees to sell unto the second party, the — of Section No. — In Township No. — North, of Range No. — West of the fifth principal meridian, containing according to the United States survey — acres, be the same more or less, for the sum of — Dollars, on which the said second party hath paid the sum of — Dollars on account of the principal.

or derived under this Contract, shall utterly cease and determine, and the premises hereby contracted shall revert to and revest in said first party (without any declaration of forfeiture, or act of re-entry or without any other act by said first party to be performed and without any right of said second party of reclamation or compensation, for moneys paid and improvements made), as absolutely, fully and perfectly as if this Contract had never been made.

And It Is Further Stipulated That no assignment of the premises shall be valid unless the same shall be endorsed hereon, or permanently attached hereto, and countersigned by the first party (for which purpose the Contract must be sent to this office), and that no agreements or conditions or relations between the second party and — assigns, or any other persons acquiring title or interest from or through — shall preclude the first party from the right to convey the premises to said second party, or — assigns, on the surrender of this agreement and the payment of the unpaid portion of the purchase money which may be due to the first party.

193 In Witness Whereof, The Sioux City and Saint Paul Railroad Company hath hereunto caused its corporate seal to be affixed and hath caused these presents, in duplicate to be signed by its proper officer, and the second party hath hereunto set — name, and the said Trustees have hereunto set their names, in the day and year above written.

_____,
Secretary Sioux City & St. Paul Railroad Company.

_____,
President Sioux City & St. Paul Railroad Company.

Countersigned and Approved.

_____,
_____,
Trustees.

Witnesses:

_____,
_____.

Witnesses:

_____,
_____.

_____,
_____,
Purchaser.
_____,
P. O. Address.

(Endorsed on the Back.)

Assignment.

____ the within named purchaser and _____ his wife, for and in consideration of — Dollars, do hereby assign and transfer all — right, title, interest and claim in and to the — Sec. — Tp. — R. — the within described, unto — heirs and assigns forever.

And — do hereby authorize The Land Department of the Sioux City & St. Paul Railroad Company to receive from the said — all unpaid balances due to said Company, on account of the within Agreement, in part consideration of said land, and upon the final payment of all the purchase money, and a full compliance with all the agreements contained in the within Agreement, to execute or cause to be executed to the said — heirs or assigns, a deed for said land instead of to —.

Given under — hand and seal this — day of — A. D.

— — — [SEAL.]
— — — [SEAL.]

Witnesses:

— — —
— — —

Countersigned:

THE SIOUX CITY & ST. PAUL RAILROAD COMPANY,

By — — —.

It is expressly understood that in consenting to recognize this assignment the first party herein does not exempt original purchaser from any of — liabilities under the contract but to protect the rights of the assignee provided he complies with its obligations.

STATE OF IOWA,

County of — — —:

Before me — — —, — in and for said County, this day personally came — — — who — known to me to be the identical person who — described in the within Agreement and who executed the foregoing Assignment and acknowledged that — signed sealed and delivered the same as — free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand this — day of — A. D. 18—

— — —.

NOTE.—The wife of the purchaser, if he have one, must join in the Assignment and if the purchaser is unmarried so state.

In consideration of the above assignment I hereby accept the conditions of this Contract, and acknowledge myself bound to perform and conform to all the obligations therein set forth.

In Witness Whereof, I have hereunto set my name, this — day of — A. D. 18—.

Witness:

— — —.

195 No. —. Agreement. Sioux City & St. Paul Railroad Co.
with — — —. For — of Sec. — Town — Range —.

P. O. — — —.

County of — — —.

State of — — —.

EXHIBIT No. 32.

F.
M. L. 190,392.
R. F. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., September 19, 1907.

I, R. A. Ballinger, Commissioner of the General Land Office, do hereby certify that the annexed copy of the notes of testimony in the case of Lewis Hoffman, et al., vs. George W. Patterson, involving the S. W. $\frac{1}{4}$ Sec. 3, T. 97, N., R. 42, W., Iowa, is a true and literal exemplification of the original remaining in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused the Seal of this Office to be affixed at the City of Washington, on the day and year above written.

[SEAL.]

R. A. BALLINGER,
Commissioner of the General Land Office.

UNITED STATES LAND OFFICE,
DES MOINES, IOWA, Feb. 28, 1896.

Notice.

You are hereby notified that the land you filed your homestead application S. W. $\frac{1}{4}$ Sec. 3-S. 97-R. 42 for, is claimed by a person under the act of March 3, 1887, and that said person has made application to make final proof to establish *their* claim to said land, and that hearing on said application will be held on May 12th, 1896. Before the Register and Receiver at the U. S. Land Office at Des Moines, Iowa.

If you desire to protest against the allowance of such proof, or know of any substantial reason, under the law and the regulations of the Interior Department, why such proof should not be allowed, you will be given an opportunity at the above mentioned time and place to cross-examine the witnesses of said claimant, and to offer evidence in rebuttal of that submitted by claimant, and in support of your application. George Saulde, George, Lyon Co., 196 Iowa; Jos. L. Cain, Cummings, Iowa; Lewis Brightnell, Greerford, Ohio; Nels Swanson Colfax, Iowa; Seward P. Allen, Des Moines, Iowa; Louis Hoffman, Des Moines, Iowa; Roscoe Lyle, Sheldon, Iowa:

WILLIAM H. TURBETT, *Receiver.*

U. S. LAND OFFICE,
DES MOINES, IOWA, May 12, 1896.

No. 106.

G. W. PATTERSON,

VS.

JAS. A. BEACOM, ROSCOE LYLE, and A. B. BLOOM.

Involving the S. W. $\frac{1}{4}$ 3-97-2.*Stipulation.*

It is hereby stipulated and agreed by and between the parties to this action that the evidence in this case may be taken in short hand, and afterwards transcribed by the reporter or clerk so taking it and when certified to by the said reporter or clerk as to its correctness it shall be accepted and considered in this case the same as if transcribed and signed by the witnesses and we hereby specifically waive all objections to the failure of the witnesses to sign their respective evidence.

Signed this 12th day of May, 1896.

W. P. JEWETT,

Atty. for G. W. Patterson.

J. F. CONRAD,

Atty. for John Beacom.

AUSTIN P. LOWERY,

Atty. for Louis Hoffman.

KING & STEARNS,

Atty. for Roscoe Lyle.

HARRY GRIFFITH,

Atty. for A. B. Bloom.

U. S. Land Office, Des Moines, Iowa.

No. 106.

G. W. PATTERSON

VS.

JAS. A. BEACOM et al

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Involving the S. W. $\frac{1}{4}$ 3-97-42.

On the 17th day of January, 1896, Wm. P. Jewett, attorney for George W. Patterson, filed his application claiming the S. W. $\frac{1}{4}$ of Sec. 3, Twp. 97, No., R. 42, under the act of March 3, 1887.

And on the 21st day of January, 1896, King & Stearns, as attorney for Jas. A. Beacom, filed his application claiming said tract of land under the act of March 3, 1887.

On the 17th day of January, 1896, W. A. Perkins filed the application of Abraham B. Bloom, claiming the said tract of land under the act of March 3, 1887.

Hearing was ordered between the parties to be held before the Register and Receiver on the 12th day of May, 1896, at the U. S.

Land Office at Des Moines, Iowa, and notice of their intention to make proof in support of their claims was published in the Sheldon Eagle a newspaper published at Sheldon, Iowa, for six weeks and posted in the U. S. Land Office for 30 days prior to the date of hearing.

On the 27th day of February 1896, the following persons made application to enter said tract of land as a homestead; Louis Hoffman, Des Moines, Iowa, application filed at 9-6½ Louis Brightnell, Greeford, Ohio, application filed at 9-18¾. Joseph Louis Cain, Cummings, Iowa, application filed at 9-50¾ Nels Swanson, Colfax, Iowa, application filed at 10-25¾ George Sualde, George Iowa, application filed at 11-11½, Seward P. Allen, Des Moines, Iowa, application filed at 11-49.

On the 23d day of March 1896, Roscoe Lyle, of Sheldon, Iowa, made application to enter the tract of land as a homestead. On the 12th day of May 1896, the case came on for hearing before the Register and Receiver and owing to other cases on trial was passed until the 13th day of May 1896; and, now on the 13th day of May 1896, the case came on for hearing before the Register and Receiver.

George W. Patterson, appearing in person, and by his attorneys W. P. Jewett and O. N. Bartlett.

Jas. A. Beacom, appearing in person and by his attorney J. F. Conrad.

Abraham B. Bloom, appearing in person and by his attorney H. K. Griffiths.

Louis Hoffman appearing in person and by his attorney A. P. Lowery.

198 Roscoe Lyle appearing in person and by his attorneys King & Stearns.

W. P. JEWETT: It is hereby stipulated and agreed by the attorneys for the applicants, claimants and protestants, that the exhibits hereinafter described viz., Exhibits A to I inclusive, K to Z inclusive, AA, BB, and CC, with so much of the record as relates to the introduction of said Exhibits introduced in the case of Leonard Lamkin, Case No. 6, Page 25, Contest Docket No. 10, U. S. Land Office, Des Moines, be and the same are hereby incorporated herein, and made a part of the record in this case, with the same force and effect and subject to the same objections as if the said exhibits were severally offered herein, and the several objections severally interposed with leave to file in place of the original exhibits such as are not printed documents with further leave to refer to the duplicate Exhibit F and the original of Exhibit G and the record of Exhibit H patent No. 2, in the General Land Office at Washington in place of filing copies of each of said exhibits.

Mr. GRIFFITHS: Each and all of said exhibits being subject to objection as incompetent, immaterial and irrelevant.

Mr. JEWETT: I also offer as Exhibit DD certified copy of the proceedings of the Board of Supervisors of the County of O'Brien, in the matter of the adjustment of taxes between said county and the

M. & St. P. Ry. Co., and the S. C. & St. P. R. R. Co., proceedings had Sept. 12, 1885.

Mr. CONRAD: Objected to as incompetent, irrelevant and immaterial; and for the further reason that the county never had any jurisdiction or authority to make any compromise or settlement with said companies, relative to the payment of taxes. and, for the reason that the same was Government Land and not taxable.

Mr. GRIFFITHS: And for the further reason that such arrangement could in no way affect either party to this suit unless it is shown that they are parties to this suit.

In the matter of final proof under the Act of March 3, 1887, for the E $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Sec. 7, T. 95, R. 42.

William H. Knepper, claimant under section 4 of the said Act for the E $\frac{1}{2}$ of the NE $\frac{1}{4}$.

Leonard Lamkin claimant under same section for the E $\frac{1}{2}$ of the SE $\frac{1}{4}$.

99 Sarah A. Weaver claimant for each of said tracts under the Act of March 3, 1887.

A. P. Lowery, appears as attorney for the homestead applicant David Tait, and as protestant against the prior claimants and claims the E $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ under the homestead laws.

E. H. French appears as attorney for John Fitzgibbons, protestant against proof of the claim of Leonard Lamkin to the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of 7-25-42. He claims the same under the homestead law.

Mr. JEWETT: I now offer in behalf of applicant Leonard Lamkin, the following exhibits;

Exhibit "A" the Act of Congress approved May 12, 1864, entitled "An Act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State." 13 Stat. 72.

Mr. KING: Applicant Weaver objects to the introduction because it is a matter of law and not a matter of record.

Mr. JEWETT: I offer exhibit "B" [and] Act of the Legislature of the State of Iowa entitled "An Act to accept of the grant and carry into execution the trust inferred upon the State of Iowa by Act of Congress, etc." approved April 3, 1866 chap. 34, Acts of the 11th General Assembly.

Mr. KING: Same objection by applicant Weaver.

Mr. JEWETT: I offer Exhibit "C" an Act of the Legislature of the State of Iowa entitled "An Act to accept the grant of lands to the State of Iowa made by Act of Congress of May 12, 1864" etc., approved April 20, 1866, being Chap. 144 of the Acts of the 11th General Assembly.

Mr. KING: Same objection.

Mr. JEWETT: I offer Exhibit "D" a certified copy of the resolutions of the board of directors of the Sioux City & St. Paul Railroad Company, adopted Sept. 19, 1866, accepting the provisions of the Act of the Legislature of the State of Iowa, approved April 3, 1866; exhibit "B" herein.

Exhibit "E" a certified copy of letter of Commissioner of the General Land Office to the Register and Receiver, Sioux City Land Office, Iowa, dated August 26, 1867, directing the withdrawal of land within the ten and twenty mile limits of the Sioux City & St. Paul Railroad grant with letter of John Cleghorn, Register U. S.

Land Office Sioux City "Iowa, dated Sept. 2, 1867, acknowledging receipt of letter of August 26, 1867.

Mr. LOWERY: Objected to as incompetent and immaterial.

Mr. JEWETT: Exhibit "F" the original list of selections by the Sioux City & St. Paul Railroad Company of lands under the Act of May 12, 1864, dated Feb. 25, 1873, approved March 5, 1873, by the Register and Receiver U. S. Land Office, Sioux City, Iowa, embracing with other lands the tract in controversy on file in and a part of the record of the U. S. Land Office at Des Moines, Iowa.

Mr. LOWERY: Objected to as incompetent and immaterial.

Mr. JEWETT: I offer Exhibit "G" a certified copy of approved list of selections to the State of Iowa, for the Sioux City & St. Paul Railroad Company under Act of May 12, 1864, approved by the Secretary of the Interior June 10, 1873, embracing the land in controversy.

Mr. KING: Objected to by all parties for the reason that the certified or certification of the Secretary of the Interior or by the Land Department of the United States and the State of Iowa was contrary to the provisions of the Act of May 12, 1864, for the reason that the Government had not certified to the completion of the road or that the said company was entitled to the land in question and that the certificate that was then made by the Secretary of the Interior which included this land was void and has since been so declared by the Supreme Court of the United States in its decision rendered therein October 21, 1895, and it is not claimed by the said certificate attached to said list of land that the same was ever properly certified to the Secretary of the Interior under the Act of May 12, 1864 and that as a matter of fact said road was not completed in accordance with the terms of the grant and afterwards so found by the Supreme Court of the United States and this list declared void as includes the land in question.

Mr. JEWETT: I offer exhibit "H" a certified copy of patent No. 2, by the United States to the State of Iowa, of lands under the Act of May 12, 1864 for the use and benefit of the Sioux City & St. Paul Railroad Company dated June 17, 1873.

Mr. KING: Objected to for the reason that this patent is contrary to the provisions of the Act of May 12, 1864, especially the provision that when the Governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a good substantial and
201 workmanlike manner as a first class road then the Secretary of the Interior shall issue to the State a patent for 100 section of land for the benefit of the road having completed the ten consecutive miles as aforesaid and that this patent is in excess of a number of acres which the company was entitled at the time of the issuance thereof according to the number of miles of constructed

road and that it is not a patent to said road and does not convey any title to it (To the railroad company) but is simply a conveyance to the State of Iowa in trust under the Act of Congress by which they were to act as trustees and that the provisions of the Act of Congress were that no conveyance to the railroad company should be made unless said road was completed in accordance therewith; said completion never having been made and said land never earned and declared forfeited by the action of the legislature of the State of Iowa in 1882, and subsequently reconveyed and returned to the United States in 1884; the said conveyance is therefore void and of no effect. That the said purported conveyance or patent being a transfer only to the State by the United States to be held in trust for the use and benefit of the Sioux City & St. Paul Company, to be only conveyed to them or used by them on a compliance with the terms of the grant of 1864, and said company having since failed entirely to comply with the provisions of said grant and construct the said road and the said trustees acting within the power and scope of the trust and under authority of law and in accordance with the provisions of the grant and the trust having declared that the road had failed to complete its line as provided by the trust by the Act of its legislature in 1882, and declared said land described in said patent forfeited and that said company had not earned the same and was not entitled to the same and that the subsequent Act of the Legislature of 1884 having returned the same to the United States and the Supreme Court of the United States, by its decision of October 21, 1895, having fully decided and passed upon these questions and declared that the patent is absolutely void and of no effect and that any transfer or interest that the company might have had, had been entirely extinguished and was therefore absolutely void and that therefore the instrument cannot be introduced in evidence as tending to establish any title in the Sioux City Company.

Mr. JEWETT: I offer Exhibit "I" the Act of the Legislature of the State of Iowa entitled "An Act directing the Governor to certify to the Sioux City & St. Paul Railroad Company certain lands named therein approved March 13, 1874, being Chap. 34 of the private laws of the 15th General Assembly.

202 Mr. KING: Objected to for the reason that it is a law and not evidence and for the further reason that the legislature of the State of Iowa had no authority after the granting Act by which the State of Iowa was made trustee to direct the Governor to sue the road or certify to the road any lands which they had not under the granting Act earned and that the road never having earned the land in question any direction upon the part of the Legislature of the State of Iowa to direct the Governor to certify the lands was without authority of law and void.

Mr. JEWETT: I offer Exhibit "K" section 2 of the Act of the Legislature of the State of Iowa entitled "An Act to relinquish certain land" approved March 27, 1884, being chapter 31 of the laws of the 20th General Assembly.

Also Exhibit "L" the original railroad company [—] to Alexander H. Rice, and E. F. Drake, Trustee, dated Aug. 1, 1871, hav-

ing with others the following endorsement, "State of Iowa, O'Brien Co., Filed for record this 25th day of May A. D. 1872, Recorded in Book B, of page 12 to 27. McAllen Green, Recorder."

All parties object to the introduction of this instrument for the reason;

First. That if it is sought to be introduced as making a conveyance from the Sioux City & St. Paul Railroad Company, it is contrary to the proviso in section 4 of the Act of May 12, 1864, where it is provided that said lands shall not in any manner be disposed of or encumbered except as the same are patented, under the provisions of this Act and should the State fail to build said road within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States." Said act further provides, that the land should not be patented to said company only as they were earned and the lands herein having never been earned and that fact fully established by the Supreme Court of the United States that this conveyance is absolutely void and of no effect.

The further objection is made to the introduction of this deed because the Sioux City & St. Paul Railroad Company do not show and it is not shown that they have ever received a title from the State of Iowa, the trustee of said company who held the land in trust upon certain conditions fixed by the Act of Congress under this Act of May 12, 1864, and by the Act of Legislature of the State of Iowa in 1882, and by the further fact of the non-completion of the said road and the finding of this fact and the decision of the

Supreme Court of the United States that said land was never
203 earned and that the Sioux City Company did not have any right or title thereto that the said purported conveyance was therefore null and void and further that it is without any authority in law whatever and contrary to the conditions of law in reference to said land in question.

Mr. JEWETT: I also offer Exhibit "M" the original confirmation of trust deed executed by the Sioux City & St. Paul Railroad Company to Elias F. Drake and Amherst H. Wilder, trustees at the dates thereof, August 25, 1884, embracing with other lands the tract in controversy by a specific description, endorsed, "State of Iowa, O'Brien County as. Filed for record this 5th day of March 1884, at 10 o'clock A. M. and recorded in Book R. of deeds, page 246 to 251 of O'Brien County records, W. H. Noyes, Recorder."

Mr. KING: Objected to for the same reason enumerated in the objections to the introduction of the last exhibit before this.

Mr. JEWETT: I offer Exhibit "N" a certified copy of the decree of the Supreme Court of the United States, Southern District of Iowa filed May 21, 1886, in the case of the Chicago Milwaukee & St. Paul R. R. Co. et al., which decree was filed for record in the office of the recorder of Deeds of O'Brien County, Iowa, May 25, 1886 in Book 23 page 187.

Mr. KING: We object to the introduction of the decree as in no manner tending to establish the title in the Sioux City & St. Paul R. R. Co., for the reason that the parties hereto were not parties

to said suit herein. And further, for the reason that this is an action between the Sioux City & St. Paul R. R. Co., and the Chicago Milwaukee & St. Paul Railway Co., simply to determine their respective rights and claims as between one another. And in no manner attempts to settle the question of whether each road had earned its grant and that the question of the forfeiture of the Sioux City & St. Paul R. R. Co., was not presented to the Court in the case or assumed to be passed upon, but simply decided what each road would be entitled to under the Act if they had complied with the grant and therefore would not be proper evidence in this case as tending to establish title in the Sioux City & St. Paul Company.

Mr. JEWETT: I offer exhibit "O" certified copy of Commissioner's report and order of Court confirming same, in the case of the Chicago Milwaukee & St. Paul R. R. Company vs. The Sioux City & St. Paul R. R. Co., No. 1481 Equity. In the U. S. Supreme

204 Court, for Southern District of Iowa, Central Division, filed October 26, 1886, embracing with other lands the tract in controversy by a specific description endorsed State of Iowa O'Brien County, filed for record this 3rd day of December 1886 at 10 o'clock A. M., and recorded in Book A of Miscellaneous letters on page 244 of O'Brien County records W. H. Noyes recorder."

Mr. KING: Same objection as to the last offer before this.

Mr. JEWETT: I offer exhibit "P" the Act of Congress approved March 3, 1887 24 Stat. 556 entitled "An Act to provide for an adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes." Being chapter 376 of the laws of the 49th Congress, 2nd Session.

Mr. KING: Objected to as not evidence but simply law.

Mr. JEWETT: I offer Exhibit "Q" the decision of the Secretary of the Interior dated July 26, 1887 in the case of the Sioux City & St. Paul Railroad Company & the Chicago Milwaukee & St. Paul Railway Company 6 L. D. 54 to 71.

I offer Exhibit "R" certified copy of letter of the Commissioner of the General Land Office to E. F. Drake, President Sioux City & St. Paul Railway Company, dated August 18, 1887, requesting the reconveyance of certain lands by said railroad company.

Mr. KING: We object to the introduction of the evidence because it is not shown that it is in reference to the land in question and it is immaterial and irrelevant.

Mr. JEWETT: I offer exhibit "S" letter press copy of the original letter of E. F. Drake, president Sioux City & St. Paul Railroad Company to Acting Commissioner of the General Land Office dated August 16, 1887 reply to Commissioner's letter of August 13, Exhibit "R."

Mr. KING: Same objection.

Mr. JEWETT: I offer Exhibit "T" the original letter of the Commissioner of the General Land Office to E. F. Drake, dated August 27, 1887, replying to Drake's letter Exhibit "S."

Mr. KING: Same objection.

Mr. JEWETT: I offer Exhibit "U" the request of the Secretary of

the Interior to the President of the United States dated January 11th, 1888 requesting suit to recover title to certain lands from the Sioux City & St. Paul Railroad Company, 6th L. D. pages 481 to 483.

Mr. KING: We object to the introduction of the letter for the reason of the error in the statement as to the recovery of the title from the Sioux City & St. Paul Company that it was an application upon the part of the settlers to have suit brought to quiet the title in the United States.

Mr. JEWETT: I offer Exhibit "V" certified copy of a bill of complaint in the case of the United States of America vs. Sioux City & St. Paul Company et al., filed October term, 1889 in the Circuit Court of the U. S. for the Northern District of Iowa, Western Division.

Mr. KING: Objected to as immaterial and incompetent, for the purpose of showing any title in the Sioux City & St. Paul Company.

Mr. JEWETT: I offer Exhibit "W" the opinion of Shiras, J. in the case exhibit "B" was filed October 20, 1890 42d Federal Reporter page 617.

I offer Exhibit "X" certified copy of the decree of Shiras, Judge, in the case of the United States vs. The Sioux City & St. Paul R. R. Co., filed Dec. 18, 1890 embracing with other lands the land in controversy.

I offer exhibit "Y" decision of the U. S. Supreme Court in case of the U. S. vs. the Sioux City & St. Paul R. R. Co., filed October 21, 1895, Supreme Court Reporter Volume 16, page 17, 159 U. S.

I offer Exhibit "Z" letter of the Attorney General of the U. S. to the Secretary of the Interior dated Nov. 17, 1887 in the matter of adjustment of R. R. grants under Act of March 3, 1887 law Docket 272.

I offer Exhibit "AA" instructions of the Secretary of the Interior to the Commissioner of the General Land Office Nov. 22, 1887, adjustment of R. R. grants, Act March 3, 1887 6 L. D. 276.

I offer exhibit "BB" letter of the Commissioner of the Gen. Land Office to the Register and Receiver of the U. S. Land Office at Des Moines Iowa, dated Nov. 18, 1895 on file in this office.

Mr. KING: The objection is made or intended to be made by all the parties opposed to the purchasing claimant.

Mr. JEWETT: I offer Exhibit "CC" so much of the evidence introduced in the case of James Potter Case No. 1, Docket No. 10, Page 20, as includes the offering of all parts or portions of the Congressional Record.

Mr. KING: Objected to as immaterial, incompetent and irrelevant.

No. 106 S. W. 1/4 -97-42.

GEORGE W. PATTERSON, called as a witness in his own behalf, examined in chief by Mr. Jewett, testified as follows:

Q. What is your age, and residence?

A. Age 37 years; residence Ashton, Iowa.

Q. Are you a native born citizen of the United States?

A. I am.

Q. In what state were you born?

A. Wisconsin.

Q. How long have you been a resident of Osceola County?

A. Seven years.

Q. Are you the identical person who is making application to make proof for the S. W. $\frac{1}{4}$ of 3-97-42; less an acre for school house site?

A. I am.

Q. Are you an original purchaser from the Sioux City & St. Paul Railroad Company for the land involved?

A. I am not.

Q. Under whom do you claim?

A. Under a contract with J. H. Pasco?

Q. Did you purchase the land from Mr. Pasco?

A. I did.

Q. When did you make that purchase?

A. I think it was July 17, 1889, it was about that time.

Q. Was there anyone who joined with you in the transaction?

A. There was.

Q. Whom?

A. My father.

Q. What is your father's name?

A. A. Patterson.

Q. Is your father now living?

A. No sir.

Q. When did he die?

A. In October 1893.

Q. What were the terms of your purchase with Mr. Pasco? Did you pay full cash or not?

A. No sir.

Q. What were the general terms?

A. We traded him cattle for his interest in the land.

Q. Did you assume any of the payments to the railroad company in the matter?

A. Yes sir, we agreed to pay the balance, of the payments and out of the purchase price we were to pay the interest to the railroad company which we did.

Q. You were to assume all payments due under the contract with the railroad company as a part of the consideration of the purchase of the property?

A. Yes sir.

207 Q. And you paid him the difference of the agreed price by turning over to him property?

A. Yes sir, am paying back interest on the contract; he was unable to pay the interest due the first of January and we agreed to pay that.

Q. That was a part that was due the railroad company?

A. That was a part of the consideration with the railroad company.

Q. Was the transaction reduced to writing?

A. I think only in the assignment of the contract. I think that was the only writing there was.

Mr. GRIFFITHS: Unless it is shown that there is a modification of this agreement, we object to the introduction of this contract.

Mr. JEWETT: We will make that all right hereafter.

Q. You will examine that paper, marked Exhibit "EE" and state whether or not that is the paper referred to which was assigned to you by Mr. Pasco.

A. It is.

Q. Are you familiar with Mr. Pasco's signature?

A. I am.

Q. You will examine the assignment of the back of this paper and state whether or not that is his signature?

A. I believe it is.

Mr. JEWETT: I now offer in evidence Exhibit "EE" contract between the Sioux City & St. P. R. R. Co., dated June 21, 1887, and A. A. Pasco, for the S. W. $\frac{1}{4}$ less an acre of Sec. 3 Twp. 97, R. 42, containing 159 acres for the agreed price of \$2146.50 reciting a payment of \$80 on account, said contract being signed by the officers of the railroad company and corporate seal affixed and countersigned by the trustees, signed John H. Pasco, purchaser.

We also offer the assignment on the back of said contract by John H. Pasco, and wife to A. and G. W. Patterson, for their interest in the S. W. $\frac{1}{4}$ of 3-97-42, dated the 17th day of July, 1889, with the acknowledgment of the said assignment dated on the same day, the acknowledgment being before Fred W. Jamison, Notary Public.

We also offer an endorsement of the approval of said assignment by the Sioux City & St. Paul R. R. Company dated July 29th, 1889.

Q. You will examine this paper marked Exhibit "EE" and state whether or not this signature is that of the purchaser is that of Mr. Pasco?

A. I believe it is.

208 Mr. STEARNS: We object to the introduction of Exhibit "EE" the same objections that were interposed in case No. 94 and the same objections may be incorporated as then made.

Mr. KING: We object to the introduction of the exhibits offered in evidence for the reason that the said contract is made in violation of the law, being specifically contrary to the provisions of the granting Act of 1864, wherein it is provided that the said company shall in no case dispose of or incumber said land until the same has been earned and patented to them; and the lands never having been earned and patented to them said sale is absolutely void.

For the further reason that said sale was made after the Act of the Iowa Legislature declaring said land to be unearned, which action was taken in 1882, and recited the failure of the Sioux City

& St. Paul R. R. Co., to comply with the terms of the granting Act of 1864, entirely resuming said lands to the State.

And for the further reason that said contract was made after the passage of the Act of March 3, 1887, and that the provisions of the Act of March 3, 1887 do not apply thereto.

And for the further reason that the evidence herein shows that the Sioux City & St. Paul R. R. Co., was never the grantee of said lands from the United States to the State of Iowa, and the evidence of which shows that said land does not come within the provisions of Section 4 of the Act of March 3, 1887, by reason of the fact that the title never having been in the Sioux City & St. Paul R. R. Co., at any time and their never having a legal and equitable title thereto, and never having earned the said land and never received the same and the same never having been patented to them nor patented by the State of Iowa to any one in trust for them that the contract of sale is absolutely void and without authority of law and does not come within the provisions of section 4 of the Act of March 3, 1887; that the pretended patent to the State of Iowa under which the Sioux City & St. Paul R. R. Co., now claim title by reason of the words in the patent, as follows, "Being for the use and benefit of the Sioux City Company," that said words are not the controlling words in the grant but are subject to the limitation prescribed by the granting Act of 1864, and the provisions of the granting Act of 1864, are by operation of law incorporated into and become a part of said patent wherein it recites that no land shall be sold or disposed of or incumbered by said company until the same has been earned and patented and the same never having
200 been earned or patented to said company that therefore no sale could be made according to law.

That by reason of the further fact of the land- in dispute covered by the contract herein were in law conveyed back by the United States to the State of Iowa by the Act of the Legislature of 1882, and by the Act of the Legislature of the State of Iowa, of 1884, taken conjointly.

And for the further reason that the evidence herein shows that the contracting claimants in this case are not bona fide or good faith purchasers for the reason.

First. That they are compelled to take notice of the provisions of the granting act of 1864, providing that said lands shall be earned and patented before conveyed, and they are compelled to take notice of the Act of the Iowa Legislature in 1882, declaring the R. R. Co., had failed to earn said land by reason of its failure to construct the said line of road in accordance with the provisions of the grant. Said Act entirely resuming the same; and of the fact that the Governor of the State of Iowa never certified said lands to the Secretary of the Interior for patenting as provided in the Act of 1864, and of the open and notorious fact that the Sioux City & St. Paul R. R. L. Co., had long prior to the making of the contract neglected and failed until after the time had expired and entirely and totally always failed to construct its line of road from Le Mars to Sioux City, and that they had already received more than they had earned.

And of the further fact that any conveyance made from the U. S. to the State of Iowa without the lands having been earned, and without the certificate of the Governor of the State of Iowa, which was never made to the Secretary of the Interior was an illegal defense and under no circumstance could the Sioux City & St. Paul R. R. Co., claim any title or interest therein. All of which fact last above recited, touching the bona fide and good faith purchaser, were found to be true by the Supreme Court of the U. S. And the patent made to the State of Iowa for said lands under which the purchasing claimant claims some sort of title in the Sioux City & St. Paul Company so as to come within the provisions of section 4 of the Act of March 3, 1887, was entirely and absolutely void, and has been set aside by the Supreme Court as aforesaid; and that no purchase can be made in the fact of this law, and of this fact bona fide and in good faith.

And for the further reason that no purchase can be made in good faith by this claimant for the reason of the open and notorious fact well known by the common report of the failure of the Sioux City & St. Paul Company to construct its line of road from Sioux City to Le Mars Iowa; and that no person can be a purchaser in bona fide and good faith contract that is contrary to law.

And for the further reason that said contracts show upon its face that it was forfeited by reason of the fact of the contract claimant or his assignor to comply with its terms in making payments thereon; and said contract upon its face, nor does the evidence show otherwise, that any extension of time was made or that its terms had been continued in such a manner as to permit the purchasing claimant in this case to receive any benefits therefrom; and that the recitations therein of his failure to make payments at the times provided in said contract, shall operate to make null and void said contract and all the rights existing in his favor, and shall utterly cease and determine, time being the essence of the contract, the payments having been long since passed due and the presumption of law is that the same has been forfeited. That the purchasing claimant is estopped that he is a purchaser in good faith, because he is compelled to take notice of the granting act of 1864, and of the Acts of the Iowa Legislature of 1882 and 1884 and of the failure of the Sioux City & St. Paul R. R. Co., to complete said road as provided by said grant, and because said contract was executed after the Secretary of the Interior had ordered suit brought by the U. S. against the Sioux City & St. Paul R. R. Co., to quiet the title of said land within the United States which action resulted in the quieting of the title in the U. S. and declaring that the Sioux City & St. Paul R. R. Co., the grantors in said contract had no right, title or interest therein and quieted the same in the U. S. all of which the purchasing claimant and his assigns are bound to take notice.

And we object to the assignment of the contracts in these cases, and of the claimant's right to prove up under the same for the reason that the assignments were made after the commencement of the suit by the U. S. against the Sioux City & St. Paul R. R. Co., October 4, 1889. The assignments being made on the 6th day of November 1889.

And for the further reason that the consideration testified to by the purchasing claimant herein is not a valid [full] consideration for the interest in said land.

Mr. Lowery: The attorney for Louis Hoffman objects to the introduction of the contract as evidence because the same is incompetent and immaterial.

211 And for the further reason that the contract on its face shows that it was entered into after the land had been excepted from the grant by the Legislature of the State of Iowa, and at a time when the title to the land was in the State of Iowa, in trust by the Government of the U. S. and at a time when the question as to the right of the company in the land was pending before the Department of the Interior, and which the Sec. of the Interior on the 29th day of July 1887, held that the Sioux City & St. Paul R. R. Company had no right title or interest in and to the land and that the same was forfeited in accordance with the act of the Legislature approved March 16th, 1882, resuming said land.

And for the further reason, that the contract and evidence introduced does not establish any fact that the Sioux City & St. Paul R. R. Company had any right, title or interest in and to the land in controversy by which they could convey the same to the assignor; Pasco, nor does it show that the Sioux City & St. Paul Railroad Company had at any time complied with the terms of the Act of Congress approved May 12th, 1864, granting to the State of Iowa the land in controversy.

And for the further reason that the assignment of the contract was made after the rulings of the Department and acts of the Legislature of the State of Iowa above referred to, at which date, the date of the assignment, this claimant had full knowledge and notice, that the Sioux City & St. Paul Railroad Company had no right title or interest in and to the land in controversy, and at a time after the suit had been begun by the United States against the Sioux City & St. Paul Railroad Company, and was then pending in the Circuit Court of the United States, Northern District of Iowa, upon which Judge Shiras held that the Sioux City & St. Paul Railroad Company had no right, title or interest in and to the land in controversy, and upon appeal of said suit and Supreme Court of the United States, on the 21st day of October 1895, affirmed said decision of Shiras, Judge of the ——— Judicial District of Northern District of Iowa, and decreed from the Sioux City and St. Paul Railroad Company all right, title and interest in and to the land in controversy, and at which time the land became the property of the General Government, and was subject to disposition only under the homestead laws of the United States.

And for the further reason, that on the 25th day of April 1895, this claimant entered into a modified agreement with the Sioux City & St. Paul Railroad Company by the terms of which he
212 parted with all claims, right, or title in and to the land in controversy, and agreed to accept in lieu thereof the money paid on the contract.

Mr. GRIFFITHS: The claimant Bloom renews his objection to the offering in evidence under this contract, or any identification of it the contract showing by endorsement that there is a modification of this agreement not introduced in evidence.

And the further objection; that the contract never having been sufficiently identified, we move to strike out all the evidence in relation to it.

Mr. JEWETT:

Q. Mr. Patterson this assignment recites the consideration of \$800. You may state whether or not that was the value placed by the parties upon the stock which was turned over as a consideration?

A. No sir; it is not the value of the stock, we considered the rent of the land for that year in that; and we paid interest to the railroad company for that year, and taxes. It was the value of the stock and those payments.

Q. Making the aggregate of that consideration?

A. Yes sir.

Q. That is a true consideration, is it?

A. Yes sir, it is approximately; the value of the cattle was lumped; they were worth the difference between the rent and the consideration named.

Q. At the time this contract was assigned and turned over to you had there been any payments by the original purchaser on the contract?

A. There had.

Q. What payments had been made by him?

A. He made the original payment of \$80. and I think he made another payment of \$167.47.

Q. Was that endorsement on the contract at the time you took it?

A. It was.

Q. You may state whether or not Mr. Pasco informed you as to whether that payment had been made?

A. I could not say whether he informed us of this fact or not. The contract showed it.

Q. In your transaction with him that installment represented paid was not taken into consideration as money you were to pay?

A. No sir.

It is understood that all of this testimony goes in subject to the objection as being incompetent, immaterial and irrelevant; and subject to the further objection raised to the instrument identified here as a contract that the whole contract had not been introduced.

213 Q. Mr. Patterson, did you make any further payments on the contract?

A. I did.

Q. They were made in behalf of the two parties in interest, were they?

A. They were.

Q. The contract bears endorsement, "Received July 29th, 1889, \$158.40 received October 14th, 1889, \$211.47; received January 25th, 1890, \$343.38. You may state whether those endorsements

correctly show further payments made by the parties in interest under the assignment on or about the date stated?

A. Yes sir.

Q. Who is the party now in interest under this contract?

A. I am.

Q. Are you the sole owner of the interest in it?

A. I am.

Q. How did you acquire the interest of your father?

A. In settling up our partnership affairs.

Q. Were you in partnership with your father?

A. Yes sir.

Q. And this interest in this land was taken as partnership property?

A. Yes sir.

Q. And upon the death of your father the interest in the partnership was settled up, and you succeeded as the sole surviving party to the property, did you?

A. Yes sir.

Q. Did you make any other or further payments on the contract than those you have named?

A. No other, I believe.

Q. Did you enter into any agreement with the railroad company, with reference to an extension of time as to further payments on the contract?

A. I did.

Q. On or about what date was that entered into?

A. I cannot give you that date.

(Mr. Jewett hands paper to the witness.)

A. (continued). I think it was one preceding that.

Q. Was that by formal contract, or by letter?

A. By letter, April 25th, 1895, we made a written agreement.

Q. You will examine this paper, marked Exhibit "FF" and state whether or not that is the extension agreement entered into between you and the railroad company?

A. Yes sir.

Q. And is that your signature on said instrument?

A. It is.

MR. JEWETT: I now offer in evidence Exhibit "F F" an agreement between the Sioux City & St. Paul Railroad Company and this purchaser for an extension of time in making payments on the contract Exhibit "E E."

Q. Mr. Patterson this extension agreement provides that you shall pay the taxes on the land as they shall severally accrue. You may state whether or not you have complied with the terms of the agreement in that respect?

A. I have.

Q. Were there any taxes paid on the land prior to your father's death by the firm of A. and G. W. Patterson?

A. Yes sir, we paid them all up to the time of his death, and I have paid them since that time.

Q. These are the original tax receipts, are they?

A. Yes sir.

Mr. JEWETT: I now offer in evidence the original tax receipts issued by the Treasurer of O'Brien County showing payment of taxes on the land involved by A. and G. W. Patterson, for the years and in the amounts hereinafter stated, with leave to incorporate in the record a statement of such payments in place of filing the original receipts as Exhibits.

The tax for 1889 paid March 22nd, 1890: \$22.65; The tax for 1890, paid March 9th, 1891, \$22.87; Tax for 1891 paid March 14th, 1892, \$28.94; Tax for 1892 paid March 1st 1893 \$29.67.

Q. Mr. Patterson subsequent to the death of your father and the acquiring of the interest under the contract did you pay further taxes on the land?

A. I did.

Q. And are these the receipts showing such payments?

A. They are.

Mr. JEWETT: I offer in evidence the original receipts of the Treasurer of O'Brien County, showing payments by G. W. Patterson on the land involved, for the years and in the amounts hereinafter stated, with leave to incorporate in the record a statement of the amounts and dates of the payments instead of the original receipts.

In full for 1893, paid March 21st, 1894, \$30.13; One half 1884, paid March 25th, 1895, \$17.89; balance 1894, paid September 30th, 1895, \$13.44; one half of tax 1895, paid March 31st, 1895, \$21.22.

Q. Mr. Patterson were any of the taxes paid under protest?

A. Yes sir.

Q. The receipts indicate which were so paid?

A. They do.

Q. The first tax paid was in March, 1890, that was paid without protest?

A. It was.

Q. And the balance of the taxes for the years 1890, beginning with the payment in March 1891, were paid under protest, as appears on the receipts?

A. All of them, yes sir.

215 Q. Each receipt having this endorsement on; "Paid under protest?"

A. Yes sir.

Q. Why did you pay under protest?

A. I discovered there was some question as to the title of the Sioux City & St. Paul Railroad Company to the land.

Q. That was subsequent to the decision of Judge Shiras, was it not, quieting the title to the United States to the land?

A. I believe so.

Q. Judge Shiras' decision was rendered in December 1890 and after that date you paid taxes in this way?

A. Yes sir.

Q. Prior to the decree of Judge Shiras deciding that the land be-

longed to the United States you paid the taxes as you paid taxes on other lands, without protest and without any question in your mind as to the title?

A. Yes sir.

Mr. GRIFFITHS: All the testimony relative to the payment of taxes by this claimant is objected to as immaterial, incompetent and irrelevant; and at this time, the evidence introduced by the claimant, showing that under the modified agreement in 1892, Exhibit "F F" releasing all the rights he may have had in the land, and it being shown that more than 90 days had elapsed, this claimant is left with the right, merely to demand back what claims he may have made of the railroad company, and he can assert no claim to the land in controversy under the contract herein. And we move to dismiss the claim of the claimant on that ground.

Ruling reserved.

Q. Mr. Patterson, have any of the payments made on the contract been refunded to you by the railroad company?

A. No sir, none of them.

Q. Were any of the payments refunded to the firm of A. & G. W. Patterson?

A. No sir.

Mr. GRIFFITHS: Any further testimony in support of the claim of this claimant to the land in controversy is taken subject to the motion to dismiss, heretofore made, and subject to the objection that the same is incompetent, immaterial and irrelevant.

Mr. JEWETT:

Q. Have you brought any suit against the railroad Company to recover any part or portion of the money paid on the contract?

A. I have not.

Q. Have you demanded of the railroad company the return of any part or portion of this money?

A. No sir.

Q. Have you tendered to the railroad company the contracts, Exhibits "E E" and "F F" and demanded the return of any of the money?

A. No sir, I have not.

216 Q. Has the railroad company tendered to you any part of the money paid on account of the contract and demanded the return of these contracts, Exhibits "E E" and "F F"?

A. It has not.

Q. Mr. Patterson, did Mr. Pasco, turn over to you the possession of this property at the time you bought him out?

A. He was to have the use of it until fall.

Q. You made a lease with him?

A. Yes sir, a verbal lease.

Q. For the continued use and occupancy of the land for a few months did you?

A. Yes sir, until he had the crop off of it.

Q. At the expiration of that lease he vacated the land and turned over the possession to you, did he?

A. Yes sir.

Q. How much was in crop that year?

A. Nearly all of it, perhaps all.

Q. What year was that?

A. That was 1889.

Q. How much land was under cultivation on the quarter section at that time?

A. Nearly all of it; there may have been some little piece that was not; perhaps all of it.

Q. There is a school house in this quarter section is there not?

A. Yes sir, in the southwest corner of it.

Q. You make no claim to the land on which that is situated?

A. No sir.

Q. You understand there has been a deed from the railroad company to the school district for that acre?

A. Yes sir, I do.

Q. And that it is excepted from your contract, do you?

A. I do.

Q. Have you had the possession and use of the land from the time of the surrender of the same to you by Mr. Pasco, up to this time?

A. I have, unless it is recently.

Q. Have you farmed the land from 1890 on, or rented it?

A. I have rented it.

Q. For each year?

A. Yes sir.

Q. To whom did you rent the land for 1890?

A. To Charles Dougherty.

Q. Was that a written lease?

A. It was.

Q. Have you that lease with you?

A. Yes sir. (Witness hands paper to Mr. Jewett.)

Q. You will examine this paper marked Exhibit "G G" and state what it is?

A. It is the lease from A. and G. W. Patterson to Charles Dougherty for the year 1890.

Q. And is this the signature of A. & G. W. Patterson?

A. Yes sir.

217 Q. Are you familiar with Mr. Dougherty's signature?

A. I am.

Q. Is that his signature?

A. Yes sir.

Q. Mr. Patterson, have you had possession and leased the land each year from the expiration of this lease with Mr. Dougherty, Exhibit "G G" which expired October 1st, 1890?

A. I have.

Q. To whom did you lease it for the years 1890 and 1891?

A. To Charles Dougherty.

Q. To whom did you lease it for the years from 1891 to 1893, the two years?

A. To Charles Dougherty.

Q. To whom did you lease it for 1894, beginning with December 1st 1893.

A. To Charles Dougherty.

Q. To whom did you lease it from September 1894?

A. 100 acres of it to Eugene Bloes, and about 60 acres of it to Thomas Beacom.

Q. For what year was that?

A. For 1895.

Q. Do you remember who you leased it to for 1894?

A. To Charles Dougherty.

Q. You will examine this paper marked Exhibit "II" and state what it is?

A. It is a lease from myself to Thos. Bracom for 60 acres on the West side of the SW. $\frac{1}{4}$ of 3-97-42, for the summer of 1895.

Q. Did you rent the rest of the quarter to anyone for that year?

A. I did.

Q. To who?

A. To Eugene Bloes.

Q. Your lease then to Mr. Bloes and with Mr. Beacom expired Oct. 1, 1895, for the entire quarter?

A. Yes sir.

[Q. Yes sir.]

Q. Did you make any subsequent leases with anyone?

A. I did.

Q. Will you examine this paper Exhibit "H H" and state what it is?

A. It is a lease for the same land to Eugene Bloes for the year 1896.

Q. You say for the same land?

A. For 100 acres on the east side of the land in controversy.

Q. Is that the lease now in force.

A. No sir.

Q. About when was it canceled?

A. The 15th day of Feb. 1896.

Q. Was it canceled voluntarily by the parties thereto?

A. Yes sir.

Q. And for what purpose?

A. Mr. Bloes had another farm rented on which there was no water and he had an opportunity to get one where there was plenty of water and he asked me to release him and he made a bargain with Thos. Beacom, to pay him for the plowing he had done on it and to rent the whole of it.

Q. Did you make a new lease with Mr. Thos. Beacom?

A. I did.

Q. To carry into effect between the parties the surrender of the former lease by Mr. Bloes and the releasing of the land to Mr. Beacom?

A. It was done at the same time.

Q. You will examine this paper marked Exhibit "K K" and state what it is?

A. It is a lease from myself to Thos. Beacom.

Q. Is that the lease referred to by you as being the one made on the surrender of the former lease to Mr. Bloes?

A. Yes sir for the SW. $\frac{1}{4}$ of 3-97-42.

Q. And that covers the entire quarter?

A. Yes sir.

Q. Had you at any time prior to this leased the land to Thos. Beacom?

A. I had, this 60 acres.

Q. For what period?

A. For the season of 1896, by a verbal agreement.

Q. And this modified lease, exhibit "K K" was then put into writing in place of the verbal lease for the 60 acres and the 100 acres which Mr. Beacom arranged with Mr. Bloes that he would take?

A. Yes sir.

Q. Is this lease now in effect?

A. No sir.

Q. When was it canceled?

A. About the first of March.

Q. Was it canceled by consent of the parties?

A. Yes sir.

Q. For what reason?

A. Mr. Thomas Beacom came up and told me that his brother James Beacom claimed possession of the land and intended putting in a crop, and I wished to bring an action to have him removed from the land, and told Thos. Beacom that I would have to commence an action through him and bring him into the litigation unless he would release his claim to the lands for the year 1896, which he did.

Q. And the matter was adjusted between you and he surrendered the lease?

A. Yes sir.

Q. Did you then bring proceedings against Mr. James Beacom?

A. I did.

Q. When did Mr. James Beacom go on there?

A. He went on there first immediately after the decision of the Supreme Court in October 1895, I think it was.

Q. Did he put any building?

A. No sir.

Q. Did he go on there to live or was he living on there to your knowledge?

A. I understood he staid there 8 or 9 days.

Q. What did he stay in?

A. In my shanty.

Q. He went into a building belonging to you did he?

219 A. Yes sir.

Q. What has been the result of that action?

A. It was in justice Court at Sheldon and the decision was against me.

Q. Have you taken any appeal from that decision?

A. I have.

Q. Have the rents been paid to you from time to time under these leases that you have testified to as having been made with the exception of those which have been surrendered, cancelled?

A. Yes sir.

Mr. LOWERY: The attorney for the protestant moves to dismiss the application of the claimant to make proof for the reason that the testimony does not show that the Sioux City & St. Paul R. R. Co., has any right, title or interest by which they could convey the land in controversy and for the same reasons given in the objections to the introduction of the contracts above referred to.

Cross-examination.

By Mr. LOWERY:

Q. How long have you lived in O'Brien Co.?

A. I never lived there.

Q. Where do you live?

A. In Osceola County.

Q. How far from the land in controversy?

A. About 4½ miles.

Q. What is your business?

A. I am in the banking business.

Q. How long have you lived in Osceola Co.?

A. 11 years.

Q. Where did this man Pasco live, from whom you purchased the contract?

A. He lived in Osceola County about a mile from me.

Q. What town do you say you live in?

A. In Ashton.

Q. When you purchased this contract how much did you pay for it?

A. About \$800.

Q. Was it in money that you paid him at the time you claim you got the contract or was it previous loans and obligations?

A. No sir, it was not in previous loans and obligations; we paid up some money that was back on the land and paid the taxes.

Q. Did you make any investigation as to whether or not the Sioux City & St. Paul R. R. could give a deed to the land prior to the time you purchased it?

A. No sir, we investigated other contracts and supposed it was all right.

Q. You knew at the time did you not, at the time you took an assignment of the contract that the question of the title to the land was in controversy.

220 A. I do not think we did as to this land, I believe we knew there were squatters on some of the O'Brien Co., lands however.

Q. Had you made any investigation to find out what action the Iowa Legislature had taken in relation to the title to the land?

A. No sir.

Q. Did you know that the title to the land was in the State of Iowa and not in the Sioux City & St. Paul R. R. Co.

A. We did not investigate the title at all we relied on the contract.

Q. Had you not heard at the time you bought the contract that the question of the title to all of these forfeited lands and particularly to this piece you bought and other lands in that section was in controversy and that the State of Iowa had refused or that the Governor of the State of Iowa had refused to convey it to the company because they had not complied with the terms of the Act of Congress granting it to the State?

A. I did not know that the Governor had refused to patent it.

Q. You knew at the time you purchased it that the Sioux City & St. Paul R. R. Co., had not completed the road from the South line of Minnesota to Sioux City, Iowa, did you not?

A. No sir I did not.

Q. How far do you live from the line of the Sioux City & St. Paul Railroad?

A. About 80 rods.

Q. It crosses some road there at Ashton, does it not?

A. No sir.

Q. Then it runs through the town of Ashton?

A. Yes sir.

Q. Had you heard or learned anything about this controversy over the rights to these lands at the time you purchased the contract?

A. We heard about it about that time; I could not say whether we had heard about it before or since.

Q. Did you know that men were squatting on that land all around in that locality and claiming it?

A. I heard about it but whether it was before or after we bought I cannot say.

Q. Did you not know that there was a case pending before the Interior Department in which the question as to the right of the Sioux City & St. Paul R. R. Co., was involved?

A. I might have known it at the time; I could not say at this time.

Q. How long did you live in Osceola County at the time you bought this contract?

A. 11 years.

Q. You bought it in 1889?

A. Yes sir, I had not been there myself all the time but I had done business there.

221 Q. Then at the time that you purchased this contract you say that you did not know that the Secretary of the Interior had decided that the Sioux City & St. Paul R. R. Co., had no right or title to this land?

A. No sir, I do not think that I knew it at that time.

Q. It is not true that before the date of this assignment of this contract which was the 17th day of July 1889, that these identical lands were having squatters settling all over them claiming them as homesteads and thought they had a right to homestead them under the homestead law because the Sioux City & St. Paul R. R. Co. had not complied with the law granting them to the State because they had not constructed the road?

A. I may have known it but I do not remember whether I knew it at that time or not.

Q. How much have you paid on the contract since you purchased it?

A. The contract will show.

Q. Who is living on that land now?

A. James Beacom claims to be living there now I believe.

Q. When did he go on there?

A. I do not know as I can answer that question.

Q. Well about what time did he go on there?

A. He claims to have gone on there about the time of the decision in the Supreme Court and he claims to have lived there ever since and made it his home.

Q. Is he married or single?

A. He is a single man.

Q. Who was in possession of the land and living on it at the time the decision was rendered on the 21st of Oct. last?

A. No one.

Q. Was there a house on there at that time?

A. There was a shanty on it.

Q. Who put it on?

A. Pasco, I believe; it was there when I bought it.

Q. Has there been any buildings put on that land since then?

A. No sir not until in the spring.

Q. What time in the spring?

A. I think about the 23rd or 24th of March.

Q. What kind of a building was put on there then?

A. Just a shanty.

Q. Have you been down to the land to see it since the decision was rendered in last October?

A. Yes sir.

Q. How many times have you been there since then?

A. I cannot tell you just how many times; I have been there I guess 6 or 7 times.

Q. Was there any one there when you went there?

A. I never saw any one there only once.

Q. Is the land leased to any one now?

222 A. I made a lease for 1896, to Thos. Beacom and his brother James Beacom and that has been canceled; it was canceled about the fore part of December.

Q. Is there any one now holding it under lease?

A. No sir.

Q. Who is farming it?

A. Thos. Beacom and I understand Lyle put some in and I put in some myself.

Q. Did you give either of these parties any authority to go into this land?

A. No sir.

Q. Can you give any dates you were at the land since Oct. 21, 1895?

A. There is only one that I can come anywhere near giving; I was there I think March 20.

Q. Was there any one there when you were there at that time?

A. Not when I went there.

Q. Now Mr. Patterson you and your father bought this contract did you not?

A. Yes sir.

Q. I believe you say your father is dead?

A. Yes sir.

Q. You signed this modified agreement did you not?

A. I did.

Q. When you signed it you understood the conditions of it did you [you] not?

A. Yes sir.

Q. When you signed it you understood the conditions of it did you not?

A. I believe I did; I tried to understand them.

Q. It said here, "That in the event of a decision in the above entitled action in the U. S. Supreme Court adverse to said Sioux City and St. Paul Railroad Company, as to the title to the said land above described, the said party of the second part will within ninety days thereafter surrender said original agreement and this modification thereof to the parties of the first part, at St. Paul, Minnesota, and receive therefor from the said parties of the first part, or either thereof the amount which has been then paid on said agreement on account of principal and interest mentioned in said original agreement, the same to be received and accepted by said second party in full settlement of all his rights under said original agreement, and this modification thereof, and as a release of any and all claims suffered by said party of the second part, his heirs, executors, administrators, or assigns, by reason of the failure of the title of said parties of the first part to said land." Have you been requested by the Company to surrender this contract?

A. I have not.

Q. Under this contract then your rights to the land or to the money under the other contract are forfeited are they not?

223 Mr. JEWETT: Objected to on the ground that it is calling for a legal conclusion of the witness. Both contracts are in evidence and the legal rights thereunder will be determined by the Court and not by the witness.

Objection sustained; exception.

Q. Have you made any assignment other than this and this modified agreement or released your right to the land or to the money paid thereon to any person?

A. State that again please.

Q. Have you made any assignment of your right to the land or to the money that you have paid to any person?

Mr. JEWETT: Objected to as irrelevant and immaterial; overruled; exception.

A. I at one time made a bargain with Mr. Bloes to buy the land but he never completed his bargain.

Mr. BARRETT: So you never made any assignment did you?

A. No sir I did not.

Mr. LOWERY: You still own then all the right to the land and the money as testified to under the contract?

A. I do.

Examination by Mr. CONRAD:

Q. Mr. Patterson when you took this assignment on the 17th of July, 1889, you knew that suit was pending did you not between the U. S. and the Sioux City & St. Paul R. R. Co. in the U. S. Circuit Court?

A. I could not say as to whether I knew it at that time or not but I knew it shortly after.

Q. You knew of the suit when it was brought?

A. I suppose I did.

Q. That the suit was not brought until shortly after the assignment?

A. I suppose I did.

Q. I believe you testified that you did not know whether you knew at the time of the petition having been filed to the Secretary of the Interior by the citizens of O'Brien County to have suit commenced?

A. I presume I did; I do not remember as to that now.

Q. Have you ever made any other agreement with the company than these two? I mean since the execution of this agreement you had made no other?

A. No sir, I have not.

Q. On which of these contract- do you rely?

A. On both of them; I consider them both as one.

224 Q. You made payments so your contract states in 1890: Have you received any notice prior to that time from the company not to make payments?

A. No sir I have not.

Q. You were not notified as to that?

A. No sir.

Q. Did you ever receive any notice not to make any further payment until you entered into this contract?

A. Why I think we had a letter from them in which they waived the right to the payments; that is they postponed time of the payment until the decision was made.

Q. That was the letter in which they advised you to go ahead and pay the taxes, under protest?

A. They never advised me to pay them under protest, we did that ourselves without their advice.

Q. You took this assignment from Mr. Pasco, did you not at that time have any understanding or any agreement with Mr. Pasco by which, if the land reverted to the Government that he should have a right to homestead it?

A. No sir.

Q. The consideration you say was \$800?

A. Yes sir.

Q. You paid no money I understand?

A. I do not think we did; we may have paid him a little.

Q. You say you gave him some cattle?

A. Yes sir.

Q. How much of that consideration did the cattle represent?

A. I did not think that would be brought in down here, or I could have told you exactly. But as I remember it there was somewhere from 20 to 25 cows.

Q. Is it not a fact then that Mr. Pasco was indebted to the bank and that you took this contract to liquidate that indebtedness?

A. He was indebted to us but we did not give him any credit on that to liquidate that debt.

Q. Did the contract liquidate any of that debt?

A. No sir; no part of it.

Examination by Mr. GRIFFITH:

Q. You have had no extension of time as to payments since that modification was entered into?

A. No sir.

Q. And you have made no payments since that time?

A. No sir.

Q. You said that you had had possession of this land since 1890 until recently?

A. I think we have possession of it now, but it is in court.

Q. Do you know a man by the name of A. D. Bloom?

A. I do.

Q. Had he not possession of that land for many years?

225 A. He plowed; I should judge about half an acre perhaps, a little less, or a little more than that; I understand he plowed that much up to 1893; since we have owned it I think he has plowed it up to that year. Since that time our tenants have plowed it, and given us a share of the crop.

Q. You say since 1893?

A. For 1894 and 1895; our tenants have cropped it.

Q. Did your tenants crop it in 1895?

A. Yes sir.

Q. You do not know of your own knowledge do you?

A. I know that the crop was all the same.

Q. From 1890 to 1894 Mr. Bloom cropped that did he?

A. Yes sir.

Q. To that extent you have not had full use of this land?

A. No sir, not of the half acre, as to getting a share of the crops prior to that time? I could not say whether we did or not.

Q. Well any matter, as to a share of the crop for that land you only know by hearsay?

A. The money itself is a pretty good indication as to that.

Q. Mr. Bloom may have cropped that land?

A. It is not very probable.

Q. He might have done so, as far as you really know?

[Q.] He may have, well, no he could not have done that because I had a man down there to see that we got our share.

Q. As to this land that Bloom had heretofore you do not know that you got any share of that land except from the statement of your tenant?

A. That is all.

Q. Did you know when you took an assignment of this contract from Mr. Pasco, that Mr. Bloom had possession of any of the lands?

A. No sir.

Q. You had seen the land had you?

A. Yes sir.

Q. You had made inquiry as to who was there working it?

A. Mr. Pasco told me he was working it.

Q. He did not tell you that Mr. Bloom had that land?

A. No sir.

Q. You had no knowledge as to who had possession of that land before you bought it?

A. No sir, only that I knew that Mr. Pasco was cropping it.

Q. In Exhibit "KK" there is a stipulation relative to the lessee taking with full knowledge of your title, and subject to your holding possession of the land; you knew of that being in there?

A. Yes sir, I wrote that myself.

Q. Now relative to Mr. Pasco's possession of the land do you know anything of a conversation had with Mr. Pasco wherein he spoke of having put in this small strip cultivated by Mr. Bloom during Mr. Bloom's absence and then his cultivating it again?

A. No sir, I never heard of such a conversation.

Q. As I understand you you acknowledged that you knew that Mr. Bloom was farming that much of that land from the time you got the contract up to 1894?

A. The tenants told me so, is all I know about that.

Q. And after this the tenants told you that he got all he cropped?

A. Yes sir, that is what the tenants told me.

Examination by Mr. BARRETT:

Q. When was the first you knew of Bloom making any claim there?

A. I think it was when Chas. Dougherty the man who rented the land the following year after I purchased it told me that Mr. Bloom was cultivating it.

Q. It was about a half an acre was it not?

A. I think it was about a half an acre, perhaps less than that.

Mr. STEARNS:

Q. Mr. Patterson you speak of Mr. Beacom moving into your house?

A. Yes sir.

Q. That was your shanty was it?

A. I suppose it was; I bought the land and it was on there at the time I bought it.

Mr. BARNETT:

Q. And it has remained there ever since?

A. Yes sir.

Mr. STEARNS:

Q. What became of that shanty?

A. I tore it down and took it home.

Q. What time did you do that?

A. I think it was about the 20th of March.

Mr. JEWETT:

Q. In 1896?

A. Yes, sir.

Mr. STEARNS:

Q. What was in the shanty at that time?

A. There was a bed and a stove, a few dishes, and an old ax.

Q. What disposition was made of them?

A. They were set out of doors.

Q. Somebody had appeared to have stored them in your shanty?

Mr. JEWETT: Objected to as immaterial; sustained; exception.

227 (Witness excused.)

No. 106 S.W. 1/4 3-97-42.

Mrs. G. W. ROTH, called as a witness in support of the applicant G. W. Patterson, examined in chief by Mr. Jewett, testified as follows:

Q. State your age and residence.

A. Age 34; residence Sheldon, O'Brien County, Iowa.

Q. Are you acquainted with Geo. W. Patterson the applicant in this case?

A. Yes sir.

Q. What relation do you sustain to him?

A. Sister.

Q. Are you acquainted with the land which he claims?

A. I am.

Q. How long have you resided in Sheldon?

A. Two years.

Q. Where were you living before that?

A. I lived nine months previous to that in Wisconsin, prior to that I lived since 1885 at Ashton.

Q. At what were you employed while in Ashton?

A. I was bookkeeper for the firm of A. & G. W. Patterson there.

Q. Did you have personal knowledge of the facts relative to the purchase by the firm from Mr. Pasco of the land involved?

A. Yes sir.

Q. You were present at the time the negotiations were had?

A. I do not think I was; I was there when the contract was signed.

Q. Are you familiar with Mr. Pasco's signature?

A. Yes sir.

Q. And with that of his wife?

A. I do not know that I ever saw her handwriting.

Q. You will examine this paper marked exhibit "EE" and the assignment on the back of it, and state whether or not this is the signature of Mr. John H. Pasco, as purchaser, and also his signature as assignor in this assignment?

A. Yes sir, they are.

Q. Each of those signatures are Mr. Pasco's?

A. Yes sir.

Q. Did you have knowledge of the facts of the purchase as to the consideration in this transaction?

A. Yes sir.

Q. What are the facts as to what was paid Mr. Pasco?

A. We were to pay the back interest to the Company, and the taxes, and he was to have the use of the land for that year. That is he was to get the crop, that was growing there and he was to receive 22 head of cattle, and they were to be kept into pasture until I think the middle of Sept.

228 Q. And all of this consideration between the parties was estimated to be at \$800 and so inserted in the assignment?

A. Yes sir.

Q. Was there anything said about the firm assuming the payments due the railroad company?

A. Yes sir, they were to assume the payments due to the railroad company.

Q. Were you employed in the bank during the time when the subsequent payments were made on the contract after that purchase?

A. I was.

Q. The contract bears endorsement of three payments of \$158.40; \$211.47 and \$343.78 made in 1889 and 1890. Did you have personal knowledge of those payments being made?

A. Yes sir.

Q. They were so made by the parties in interest A. & G. W. Patterson were they?

A. Yes sir.

Q. In connection with your duties did you have to do with the issuing of drafts and forwarding money?

A. I did.

Q. And you knew these payments were made?

A. Yes sir, I do.

Q. This assignment was made to the firm of A. & G. W. Patterson?

A. Yes sir.

Q. And Mr. Patterson is not now living?

A. No sir.

Q. When did your father die?

A. The 24th of October 1893.

Q. You may state whether or not Mr. G. W. Patterson has suc-

ceded to the interest of the firm in this property as its surviving partner?

A. He has.

Q. You make no claim to the property?

A. None whatever.

Examined by Mr. CONRAD:

Q. Was there any administration of the estate of Mr. A. Patterson?

A. Yes sir.

Q. And this contract was put in as assets, was it?

A. No sir.

Q. Was there any division of those assets by the courts?

A. This was an agreement between ourselves.

Q. It is between yourselves?

A. Yes sir.

Q. How many heirs are there?

A. Nine.

Q. How was that agreement, was it verbal, or did you have an agreement in writing as to the division of this estate?

A. It was in writing; I wrote the division of it in books myself.

Q. You had an amicable division, had you of the estate?

A. Yes sir.

229 Q. And according to that division this contract went to the claimant?

A. This contract went to him.

(Witness excused.)

Mr. GRIFFITHS: All the testimony of the last witness is objected to as incompetent, immaterial and irrelevant, and the applicant Bloom moves to strike out said evidence.

E. BECKWITH, called as a witness in support of the applicant, George W. Patterson, examined in chief by Mr. Jewett, testified as follows:

Q. What is your age and residence?

A. I am forty-five years old, residence, Ashton, Iowa.

Q. Are you acquainted with Mr. Patterson, the applicant in this case?

A. Yes sir.

Q. And with the land which he claims?

A. Yes sir.

Q. How long have you known Mr. Patterson?

A. I have known him for the last ten or eleven years.

Q. How long have you known the land?

A. I have known the land for thirteen years.

Q. Since about 1883, then?

[Q.] Yes sir.

Q. [Was] was the condition of the land when you first knew it?

A. It was raw prairie.

Q. Unimproved wild prairie, was it?

A. Yes sir.

Q. When was the first improvement made on it?

A. I could not tell you that.

Q. Who made it?

A. Mr. Pasco, I think.

Q. Mr. J. H. Pasco, the party who afterwards bought the land?

A. Yes sir.

Q. Did you know of his purchase from the railroad company?

A. Yes sir.

Q. Was it before or after he bought it?

A. I think it was before he bought it.

Q. Was it one, or two or three years before?

A. It was two or three years before.

Q. What did he do on the land?

A. He broke it all up and put a shanty on it.

Q. All the land was broken out, was it?

A. I think it was.

Q. There is a school house on the land, is there not?

A. Yes sir.

Q. When was that built?

A. I do not remember now; I think it was five or six years ago.

Q. Was there any one claiming the land at the time Mr. Pasco broke it up, besides himself?

A. Not that I know of.

Q. Did Mr. Pasco crop the land from the time he broke it on up to the time he bought it?

A. No sir.

Q. I say did he crop it?

A. Yes sir.

Q. He cropped it each year, did he?

A. Yes sir.

Q. How long did he continue to crop the land?

A. As long as he staid on it.

Q. When did he leave it?

A. I do not remember just how long ago it was.

Q. Down to the time that he sold to Mr. Patterson?

A. Yes sir.

Q. Did he ever live on the land?

A. Mr. Patterson?

Q. Yes sir.

A. I think not.

Q. There are no considerable buildings on the land?

A. No sir.

Q. Just a shanty?

A. Yes sir.

Q. Who built that shanty?

A. Mr. Pasco.

Q. Do you know when?

A. No sir, I could not say when it was.

Q. Do you have any personal knowledge of the facts of the sale by Mr. Pasco to the Pattersons?

A. No sir.

Q. You have heard Mr. Patterson's testimony in this case have you?

A. Yes sir.

Q. You have heard him state that he bought the land in July, 1889?

A. Yes sir.

Q. And that Mr. Pasco remained there the balance of that year?

A. Yes sir.

Q. Did you have any knowledge of Mr. Pasco's being there at that time?

A. Yes sir.

Q. Who had the land for 1890, the following year? Was it leased by Mr. Patterson at that time?

A. Yes sir to Charles Dougherty.

Q. Did you at any time do any work on the land?

A. No sir.

Q. You may state if you know whether the Pattersons have rented the land from year to year and had possession of it since the purchase?

A. Yes sir they have.

Q. Have you known of any one interrupting their possession; any one making a claim to it, other than them?

A. No sir; no more than that little strip that Mr. Patterson spoke about; that Mr. Bloom had.

Q. How much was that?

A. About a half acre.

Q. When did Mr. Bloom first make any claim to that half acre?

A. I could not tell you now.

Q. Was it since the Pattersons bought or before?

A. It was before.

Q. Did Mr. Pasco ever have any trouble about the possession of the land that you know of?

A. Not that I ever heard of.

281 Mr. GRIFFITHS: Did you not go on the land to break for Mr. Patterson?

A. No sir.

Q. Did you go on the land to break for anybody?

A. Yes sir.

Q. About what time was that?

A. 1884.

Q. In 1884?

[Q.] Somewhere along there; perhaps before that.

Q. Did any one object to your breaking at that time?

A. Yes sir.

Q. Who?

A. A. B. Bloom.

Q. You have known the land, you say, since 1883?

A. Yes sir.

Q. Has or has not Mr. Bloom been cropping or in possession of a certain part of that land since that time, that *be* objected to your breaking on that land?

A. Yes sir.

Q. Continuously up to that time?

A. I could not say up to this time.

Q. That is your understanding, is it not?

Mr. JEWETT: Objected to.

Q. How far do you live from the land?

A. I live about four miles from it now; at that time I lived about a mile from it.

Q. You have known of Mr. Bloom cropping this strip of land?

A. Yes sir.

Mr. JEWETT: His possession was going on and plowing and putting in some crop there?

A. Yes sir, that was all.

Q. He had no building on it?

A. No sir.

Q. He never lived on it?

A. No sir.

Mr. GRIFFITHS: But this objection of his to your plowing, on there was prior to Pasco's taking possession of the land, was it not?

A. I think it was.

Mr. JEWETT: When did you say you did this breaking on this land? About what year?

A. About 1883 or 1884.

Q. For whom did you do it?

A. I forget the man's name.

Q. Was it Patterson?

A. No sir.

Q. Would you recall the name if you heard it?

A. Yes sir.

Q. Was it a man by name of Stevenson?

A. Yes sir.

Q. How much did you break?

232 A. I do not know; two or three furrows.

Q. Was Mr. Stevenson claiming the land at that time?

A. Yes sir.

Q. For what reason did you stop breaking after running two or three furrows?

A. Mr. Bloom ordered us to quit, and we quit.

Q. Was there any other reason?

A. No sir.

Q. Did you ever get paid by Mr. Stevenson for doing that work?

A. No sir.

Q. Did you at any time state to Mr. Patterson that you stopped plowing because you were afraid Mr. Stevenson would not pay you if you did the work?

Mr. GRIFFITHS: Objected to as immaterial, irrelevant and incompetent.

A. No sir.

Mr. GRIFFITHS: Do you claim any of this land in O'Brien Co.?

A. No sir.

Q. You do not own any land up there?

A. No sir.

Q. You never had a contract with the railroad company?

A. No sir.

(Witness excused.)

Mr. GRIFFITHS: We object to the direct examination of this witness, as incompetent, immaterial and irrelevant, and move to strike it out for the same reasons.

Mr. JEWETT: It appearing by the evidence in this case that there has been paid to the Sioux City & St. Paul Railroad Company the sum of \$960.72 no part of which has been refunded, which amount is largely in excess of the Government price for said land, I now move that the final proof of the applicant Patterson be accepted and final certificate issued therefor, as provided in the Circular of Instructions of February 13, 1889, relative to proof under the Act of March 3d, 1887, tendering herewith the sum of \$8.00 as fees and commissions for making final proof as in pre-emption and homestead cases.

REGISTER: The tender is at this time refused, and the ruling on the motion is reserved.

Mr. STEARNS: The homestead claimants move to dismiss this case because the purchasing claimant had entirely failed to show that he comes within the provisions of Section 4 of the act of March 3d, 1887, or any other provision thereof, for the reason that said
233 land was never in the Sioux City & St. Paul Railroad Company, and it purporting to be the grantor of the claimant, and, therefore, should be the grantee of the grant; and it never having been the grantee of the grant in the conveyance or transfer of any title therein to said Company, that the actions can not be maintained.

And for the further reason, that this contract upon which the claim is based is absolutely void by reason of being illegal and contrary to the granting act of 1864, providing that no sale or disposition of the land should be made by the railroad company until the same was earned and patented, and the same never having been earned or patented, and this contract being in direct violation of this law, it is void.

And for the further reason; that the contract was made after the passage of the act of March 3d, 1887 of which he was bound to take notice, and also, that the purchase was made after the act of March 16, 1882 of the Legislature, declaring this land forfeited by reason of the failure of the Sioux City & St. Paul Railroad Company to construct its line of road in accordance with the provisions of the granting act of 1864, which said act recited that said land had never been earned by the Sioux City Company, and was entirely [*resume*] to the State of Iowa.

And, by reason of the further fact; that the Governor of the

State of Iowa never certified said lands to the Interior Department for patent, the same never having been earned, and which certificate never could legally be given, and that the Supreme Court of the United States has found that the so-called patent given to the State of Iowa was illegal and void.

And, for the further reason, that the so-called patent to the State of Iowa under which the claimants, claim there was some sort of title to the Sioux City Company by, reason of the words, "for the use and benefit of said company;" that those words are understood to be subject to the granting act of 1864, which provides that the grant should be made only on the conditions therein named; that those conditions attach to and become a part of said patent.

And, for the further objection; that the railroad company never having either the legal or equitable title to said land and this contract being contrary to the granting act, it is absolutely void, and the purchasing claimant cannot recover herein.

And, for the further reason; that the contract under which the claimant claims title has been forfeited by its own terms, no extension of time being shown sufficient to cover the lapse of
234 time, as shown by the contract, and is in violation thereof, and that it stands by its own terms as aforesaid; that the purchasing claimant is estopped from claiming or making, or attempting to make his purchase bona fide and good faith, for the reason that he had actual notice of the defects of the title.

And for the further reason; that he was compelled to take notice of the acts of Congress and the terms of the granting act of 1864, and the act of the Iowa Legislature in 1882, and in 1884, and of the failure of the Governor to certify said lands, as provided in the granting act; and he must take notice of all the facts public, acts, of the Congress of the United States and of the General Assembly, and is bound thereby, and can not be a purchaser in good faith under the law.

And we move to dismiss the application of claimants, Patterson, for the further reason that the evidence shows that the original contract has been supplanted by the so-called modified agreement; this applicant agreed with the Sioux City & St. Paul Railroad Company that in the event the Supreme Court of the United States decided that the title to the land in controversy was in the General Government to surrender to the Sioux City & St. Paul Railroad Company all claims said applicant might have against said company by virtue of the contract entered into with said company, for the land in controversy. That there has been no further or other contract entered into between the claimant and the said company, and, as it now stands, the Supreme Court having decided that the title to the land in controversy is in the general Government, and never was in the Sioux City Company, the applicant is confined by his own act and agreement for recourse against the said company, and can have no claim, or interest in the land in controversy.

Mr. GRIFFITH: On behalf of the claimant Bloom, I now move to strike from the record all testimony offered on behalf of the

claimant Patterson for the reasons stated in the several objections made to the introduction of the testimony.

And, for the further reasons: that said claimant has published notice of intention to make proof herein as the assignee of a bona fide purchaser from the Sioux City & St. Paul Railroad Company and no competent testimony of either the fact of the purchase or the good faith on the part of the alleged purchaser, or of this claimant, as his assigns, has been offered or introduced herein; that all the evidence offered has been incompetent, immaterial and irrelevant, hearsay and conclusions of the witnesses. That no affirmative showing has been made that the alleged contract herein has not been declared void, according to its terms, by the Sioux City & St. Paul Railroad Company, for non-payment of the amounts agreed to be paid therein; that no testimony has been introduced by claimant showing that he is the party in interest herein, or that he has any rights in, or is the owner of the contract herein. And I move to dismiss the claim of the claimant Patterson, for the reasons above given.

Ruling reserved.

Mr. LOWERY: The attorney for Louis Hoffman offers the same objection.

And for the further reason, that the land in controversy is only subject to disposition by the General Government under the homestead laws of the United States.

JAMES A. BEACOM, called as a witness in his own behalf, sworn, examined in chief by Mr. Conrad, testified as follows:

Q. State your name, age, and post office address.

A. James A. Beacom, age forty five; post office address, Sheldon, Iowa.

Q. Where were you born?

A. In the State of Iowa.

Q. Have you always resided in the United States?

A. Yes sir.

Q. On what Government description of land do you live at this time?

A. On the southwest quarter of 17-97-42.

Q. The land in controversy?

A. Yes sir.

Q. When did you first establish a residence on that land?

A. On the 22nd day of last October.

Mr. LOWERY: I move to strike out the evidence of the witness, for the reason that the settlement upon the land was prior to the day of opening February 27th, 1896.

Q. What did you do at that time?

A. I went there and staid there quite a while every night, and then I went off for awhile; I staid there about half the time until this spring; I guess, I have been there, probably five or six nights in the week; and then I would go home.

Q. What have you in your house

A. A stove, a bed, two chairs, a table and dishes, and such things as a bachelor would have.

Q. Have you cultivated this land any?

A. Yes sir.

Q. What have you done in the way of cultivating it?

A. I have 160 acres of crop in there.

236 Q. What kind of a crop?

A. Wheat Oats & Barley.

Q. You have the whole quarter section in crop?

A. Yes sir.

Q. Have you taken a homestead?

A. No sir, I filed on a homestead once.

Q. I mean did you ever receive a patent; did you ever prove up?

A. No sir, never.

Q. How long did you reside in that house that you moved into when you first went onto this land?

A. About five months, I think.

Q. Well, what became of that house?

A. I went away to town one day to get a load of lumber, and while I was gone, I think Mr. Patterson came down there and tore it down and hauled it off.

Q. Did you put up another house?

A. Yes sir.

Q. Where?

A. Right on the same spot.

Q. About what time was that?

A. It was about two days later than the day he had taken his other one off.

Q. About what month?

A. In March about the 18th or 20th, 1896.

Q. Have you occupied this house ever since?

A. Yes sir.

Q. Where are you residing now?

A. Right there, in that house.

Q. What was the condition and the character of this land at the time you first went on there? Was there any one living on it?

A. No sir.

Q. It was vacant, was it?

A. Yes sir.

Q. It had been broken up, had it?

A. Yes sir.

Q. Had your possession been quiet and uninterrupted since you went on there on the 22nd of October?

A. Yes sir.

Q. Have you had any difficulty.

A. Yes sir, I have had difficulty with Lyle and with Mr. Patterson.

Q. What difficulty did you have with Lyle?

A. On the morning of the 23rd they hauled a covered wagon on my land; I went across to see about it, and I met Old Mr. Lyle coming across the plowing; I had just got up and came out and

started across on foot; and we chewed the rag a little while, and I went in.

Q. What did that culminate in, in any law suit?

A. No sir; we had a little trouble, that day, and I had to go to town the next day and they hauled the shanty off.

Q. When did they put the shanty on there?

A. On the 23rd.

237 Q. Did they have to put the shanty back on?

A. Yes sir.

Q. Did you have any lawsuit about that?

A. Yes sir, I had a lawsuit in justice court over that; they got beat and the sheriff came and took the shanty off.

Q. Has it ever been back on there?

A. No sir.

Q. What trouble did you have with Mr. Patterson, if any?

A. He sued me for possession about the 20 of March I think it was.

Q. That is the case he spoke of in his examination, is it?

A. Yes sir.

Q. Did anybody else ever attempt to crop this land other than you?

A. Yes sir; Patterson came down there one day after I had finished up sowing my crops and sowed about one hundred rods long about thirty two feet wide and dragged one land with a harrow; I had the crop sowed and it was coming through the ground.

Q. Was that all the attempt he made to crop it?

A. Yes sir.

Q. Who else attempted to crop it.

A. Bloom came along there one day before it was hardly fit to crop and sowed about a quarter of an acre on top of the corn stalks.

Q. Was that all he did?

A. Yes sir.

Q. Did he establish any residence on there?

A. No sir.

Q. He had no house on there?

A. No sir.

Q. He made no pretense of living on there?

A. No sir.

Q. What did you take this land for?

A. For a home.

Q. Under what law?

A. Under the homestead law of the United States.

Cross-examination by Mr. STEARNS:

Q. When did you file on other Government land?

A. In 1893.

Q. What was the description of it?

A. I do not just remember.

Q. Was it in Iowa, Dakota, or where?

A. In Dakota.

Q. In what land district?

A. I do not know; it was about forty two miles from Canadian line.

Q. In Devil's lake District?

A. Yes sir.

Q. You filed on land there and took a homestead receipt for the same did you?

A. Yes sir.

Q. Have you ever relinquished that land?

A. I have never seen it since.

238 Q. You have that receipt now, have you?

A. Yes sir, I have the receipt that I got when I filed on it.

Examination by Mr. LOWERY:

Q. You abandoned that land that you filed on in Dakota did you?

A. Yes sir.

Q. What was the section; do you remember?

A. The northwest quarter of Section 35, Township 157 North, of range 72.

Q. What is the number of your application?

A. 5,056.

Q. And the date?

A. May 26th 1893.

Q. Is that your signature to these affidavits?

A. Yes sir.

Q. Who swore you to them?

A. I think Mr. Stearns did that work.

Q. Who swore you to the affidavit?

— The Register.

Q. And you swore in this affidavit that since August 30, 1890 you had not entered under the land laws of the United States, or filed on land which would make more than 320 acres; when you swore to that did you not know that you had made application for 160 acres of land in Dakota?

A. Yes sir.

Q. When did you go onto this land that you now claim?

A. The 22nd day of last October.

Q. What did you do then to establish a residence on the land?

A. I just went to plowing it.

Q. Who had control and possession of the land at that time?

A. Mr. George W. Patterson of Ashton.

Q. You knew that when you went in there?

A. Yes sir, I knew that at that time.

Q. How long did you stay there then?

A. I have staid there ever since.

Q. I believe you stated some one tore your house down?

A. Yes sir, but I have had one on there ever since after a few days.

Q. Have you a team?

A. No sir.

Q. What personal property do you own?

A. A few calves.

Q. Have you cooked and eaten your meals in that shanty on those premises?

A. Yes sir.

Q. How often?

A. Not very often, there is a place right across the road where I board most of the time.

Q. What furniture have you in your house?

A. Beds, chairs tables and stove.

Q. What sized building have you on this land?

A. 12 by 14.

239 Q. 12 by 14 feet?

A. Yes sir.

Q. Is there a door in it?

A. Yes sir.

Q. Any window?

A. Yes sir.

Q. Is there a floor in it?

A. Yes sir.

A. A shingle roof, half pitch.

Mr. LOWERY: We move to strike out the evidence of this witness for the reason that the settlement was made prior to the 27th day of February 1896 before the land was open for entry.

And for the further reason, that the witness shows he is unqualified, to take possession of it, having made application for a tract of land in Dakota, as stated in his evidence, and voluntarily abandoned the same.

Examination by Mr. GRIFFITHS:

Q. Where did you live prior to going onto this land?

A. I live around Sheldon.

Q. How long have you known of this land?

A. About eighteen years.

Q. Who was in possession of it in 1884?

A. There was no one in possession of it, to my knowledge, in 1884.

Q. Do you know A. B. Bloem?

A. Yes sir.

Q. How long have you known him?

A. Eighteen years.

Q. He lived in the vicinity of this land in 1884?

A. Yes sir.

Q. Did you not know that he had some plowing there?

A. I thought he broke a fire break there; he used to plow that up to keep the weeds out.

Q. Did he tell you that he plowed it up to keep the weeds out?

A. No sir, I just guess at it.

Q. Did you ever know him to raise crops there?

A. He may have some.

Q. You do not know that he has not raised crops there for the last three or four years?

A. Yes sir; I do, from my own personal observation, I have worked on that quarter section for a long time; I know if he ever raised any crop on there he never reaped it.

Q. But you know, prior to his going on there that he had that breaking on there?

A. Yes sir.

Q. You had known it for years?

A. Yes sir, I had.

Q. Do you say you have all this land in crop this year?

A. Yes sir, I have 159 acres in crop; there is one acre left for a school house.

Q. Do you know that Mr. Bloom has a part of that land in crop this year?

A. Yes sir, I know that he sowed it.

240 Q. Were you there when he sowed it?

A. No sir.

Q. Were you there at any time when he was cultivating it?

A. No sir, I know the man who sowed it there, his name was Shook.

Q. You do not know how they cultivated it, or what they did?

A. Yes sir, I do; it was sowed with a broad cast seeder and it filled up with corn stalks before it would go a half a rod.

Q. He might have cultivated it in what he sowed there and afterwards harrowed it in?

A. No sir, he did not cultivate it.

Q. Do you know from your experience that he did not cultivate that land and then go over it with a drag?

A. Yes sir, I do; he might have gone over it with a drag, but the drag would not cut any figure any more than a little brush.

Q. Do you say that you know he did not cultivate that land that he had sown and then took a drag to it?

A. Yes sir, I do.

Q. Suppose he had cultivated it on the corn stalks and then taken a drag and run over it would not the appearance be the same?

A. No sir.

Q. What would be the difference?

A. I was there within an hour after he did the work.

Q. Do you pretend to say that he had not cultivated it?

A. Yes sir, he did not cultivate it.

Q. That grain is growing there now, is it not?

A. Yes sir, pretty thick.

Mr. CONRAD: You can tell when a piece of ground has been plowed?

A. Yes sir.

Q. You are a farmer?

A. Yes sir.

Q. You have been a farmer all your life?

A. Yes sir.

Q. And if this land had been cultivated with a plow, you would have known it?

A. Yes sir.

Mr. GRIFFITH: It is customary up there with some people to merely cultivate it and then drag it afterwards?

A. Not on corn stalk ground.

Mr. LOWERY: Has Mr. Bloom ever lived on that land?

A. No sir.

Mr. JEWETT: You state that you have lived in the vicinity of this land known it for some eighteen years?

A. Yes sir.

Q. Who cropped the land for the year 1895?

241 A. George W. Patterson of Ashton, had it rented to tenants; one was my brother, and the other Eugene Bloes.

Q. Do you know whether or not your brother had a lease for the land in 1895?

A. I never saw it, but I am satisfied that he had.

Q. Do you know when that lease expired?

A. I know that he had a lease last winter at one time, and that Patterson asked him to give it up, so he could get possession. He said that he would not sue for possession until he obtained that lease.

Q. You went onto the land, then, at the time when your brother had a lease for it, did you not?

A. I think his lease had expired at that time.

Q. Did not your brother have a crop standing on the land at that time?

A. Yes sir.

Q. What was that crop?

A. Corn.

Q. How much?

A. It was supposed to be sixty acres.

Q. That corn had not been husked yet?

A. No sir.

Q. Did you help him husk the corn?

A. Yes sir.

Q. When was the corn all husked out?

A. I think in December or January.

Q. You stated that you had quiet and undisturbed possession. Do you mean to say that your possession was absolutely quiet?

A. It is according to what you call quiet; I was not interrupted by anybody for a few days.

Q. From the time you first went onto the land in October your possession was interrupted several times by different parties, was it not?

A. It was interrupted by Patterson once.

Q. Did not Mr. Bloom come on there and claim some interest in it?

A. Not when I was there, but he came there one evening when I was not there and sowed about a quarter of an acre of wheat in the corn stalks.

Q. And the Lyles were claiming some right there on the 23rd day of October were they?

A. Yes sir.

Q. When did they go away?

A. I think it was on the 24th day of October.

Q. This covered wagon that you refer to was only there, about a day or night?

A. It was only there a few hours after they hauled this shanty on there.

Q. At the time you put this crop in on the land you knew that Mr. Patterson was claiming the land under the contract from the railroad company?

A. Yes sir.

242 Q. You knew of the land having been leased by Patterson for several years?

A. Yes sir.

Q. You knew that prior to that Mr. Pasco had the land?

A. Yes sir.

Mr. LOWERY: Is Mr. Lyle living on that land now?

A. No sir.

Mr. JEWETT: In the cross examination by Mr. Griffiths you were asked with reference to the cropping of this half acre or so by Mr. Bloes, and whether or not he got any of the crop; did he get the crop?

A. He did not last year.

Q. Who got the crop for the last several years?

A. Mr. Patterson.

Q. If the others put in the crop he harvested it and took it off, did he?

A. Yes sir, Mr. Patterson got his share of it so far as I know.

Q. You were working there for your brother all the time?

A. No sir, I helped thresh the grain each year for several years.

Q. You know of your own knowledge, then, that this half acre was cut with the other land, and all turned in together?

A. Yes sir.

Q. And all accounted for, for which Mr. Patterson got his share under the lease?

A. Yes sir.

Q. The suit between you and Mr. Patterson was for the possession?

A. Yes sir.

Q. You prevailed in the suit and he has taken an appeal, has he?

A. Yes sir, that is what I understand.

Q. When you went on to the land first what building did you go into?

A. A building that I supposed belonged to Pasco.

Q. It had been on the land for a number of years?

A. Yes sir.

Q. It was there at the time Mr. Patterson bought out Mr. Pasco was it not?

A. Yes sir.

Q. Do you know whether or not he has sold that building to Patterson?

A. No sir, I knew nothing whatever of that sale.

Q. Do you know of Mr. Pasco making any claim whatever to that building since he sold out to Mr. Patterson?

A. No sir.

Q. How long were you in that building?

A. I think I staid there until the 18 of March.

Q. Did you stay there all the time in the building?

A. No sir, about half time, altogether.

243 Q. What was the condition of that shanty when you went into it?

A. There was not a sash in the windows.

Q. Was it floored?

A. Yes sir, and double sided up.

Q. Were there any boards gone from the building?

A. Yes sir, two or three?

Q. You replaced them, did you ?

A. Yes sir.

Q. Had the building stood in that condition for some time prior to your going into it?

A. Yes sir, it had been used for a granary; I do not think it was used for the last few years.

Q. It was taken off by whom?

A. By Patterson: he told me he took it off.

Q. At the time he told you that he had taken off the building did he state to you whether he was claiming the land or not?

A. Yes sir.

Q. He so informed you, did he?

A. I do not know that he did, but he brought suit against me soon afterwards.

Q. And you have put up another building on there have you?

A. Yes sir.

Q. How much of a building?

A. 12 by 14-8 feet high.

Q. You are living in it now?

A. Yes sir.

Q. And have been?

A. Yes sir.

Mr. CONRAD: It was there when you came away, was it?

A. Yes sir.

Q. Where has Mr. Bloom been living?

A. In Ashton.

Q. He had lived on this land?

A. I think he did until two or three years ago on the quarter west of it.

Q. Does he own that quarter?

A. I think he does.

Q. The southeast quarter of 4.

A. Yes sir.

Q. What part of the quarter is this half acre on?

A. On the west side of the quarter, on the northwest corner of it; it runs about a half a rod or a rod down by his building that he used to live on, on this quarter in controversy now.

Q. Did Mr. Bloom have buildings on this quarter in controversy?

A. No sir, he had buildings on the quarter west of it.

Q. And this quarter ran south to below where the buildings were on the northwest quarter?

A. Yes sir.

Q. How wide is that strip of land that he has at any time broken up?

A. I think it just a rod wide; about five or six corn rows on it, I think.

Mr. LOWERY: When you went on there, you did not put up a building to go into?

244 A. No sir, there was one already there.

Q. How long after you went on there did you put another house on there?

A. In March.

Q. When did Mr. Lyle go on there?

A. Some time in October; the 23 of last October about 9 o'clock I think.

Q. Has he been living on the land since?

A. No sir, he staid there that day, I guess, and a part of another day.

Q. He has not lived on that land at any time since then?

A. No sir.

(Witness excused.)

Mr. LOWERY: I move to strike out all the evidence of this witness, as incompetent, irrelevant and immaterial, and it does not show his right to homestead entry.

JOHN SULLIVAN, called as a witness in support of the claimant Beacom, examined in chief by Mr. Conrad, testified as follows;

Q. State your name?

A. John Sullivan.

Q. Where do you live?

A. In O'Brien County, at Sheldon.

Q. How long have you lived there?

A. Seventeen or eighteen years?

Q. Do you know James Beacom?

A. I do.

Q. How long have you known him?

A. I have known him about that long.

Q. Where is he living now?

A. On the southwest quarter of 3-97-42.

Q. Do you know when he went on there?

A. I do.

Mr. LOWERY: Objected to as incompetent, and immaterial and move to strike it out.

Q. When was that?

Same objection.

A. On the 22nd day of October 1895.

Mr. STEARNS: Same objection; and the further objection that

if there be any more evidence taken by this witness, as the homestead claimant, he is unqualified to make homestead application.

Overruled. Exception.

Q. What improvements has he on those premises?

A. He has a shanty about 12 by 14, I think.

Q. Is he residing in that shanty?

A. Yes sir.

245 Q. How much land has he in crop?

A. I think he has it all but where the school house is and what the road takes out.

Mr. LOWERY: Same objection; and move to strike it out.

Q. Do you know whether he is living there?

A. He has been there; I have seen him there.

Q. Do you know anything about Lyle going on there?

A. I do.

Q. Do you know when he went on there?

A. I think he went on on the morning of the 23d.

Q. After Beacom moved on there?

A. Yes sir.

Q. Did they have some controversy, or a lawsuit over that land?

A. Yes sir.

Q. Do you know how that lawsuit terminated?

A. Beacom put them off.

Q. Do you know Mr. Bloom.

A. Yes sir.

Q. Do you know anything about his cropping that land, or doing anything on it?

A. I do not.

Q. If he ever cropped it you know nothing about it?

A. I do not think he ever cropped it.

Mr. STEARNS: Where did you live about the 22nd day of March 1896?

A. On Section 7.

Q. How far from this land?

A. I think it was about two miles and a quarter.

Q. Were you on this land on the 22nd of March?

A. I could not say as to that; I went by there several times.

Q. Do you know whether you went by there on the 22nd of March.

A. I could not tell you as to that.

Q. Do you know that Mr. Lyle was living on that land, or had a house on there on the 22nd of March 1896?

A. He might have had.

Q. You do not know whether he had or not?

A. No sir, I do not.

(Witness excused.)

Mr. LOWERY: I move to strike out the testimony of this witness for the reasons given for striking out the testimony of the claimant Beacom, as incompetent and immaterial.

CHARLES DOUGHERTY, called as a witness in behalf of the homestead applicant, James A. Beacom, examined in chief by Mr. Conrad, testified as follows:

Q. Where do you live?

A. On the northeast quarter of section 3, township 97, Range 42.

246 Q. Do you know James A. Beacom?

A. Yes sir.

Q. How long have you known him?

A. Twelve or thirteen years.

Q. Do you know where he is residing now?

A. On the southwest quarter of Section 3-97-42.

Q. That is the same section on which you live?

A. Yes sir.

Q. Do you know when he took possession of this land?

A. Yes sir.

Q. When?

A. On the 22nd day of October 1895.

Q. Has he been in possession of it ever since?

A. Yes sir.

Q. Do you know of his putting a crop in on this land.

A. Yes sir.

Q. How much has he in crop?

Mr. LOWERY: Objected to as incompetent, and immaterial and move to strike it out.

A. He has it all in crop.

Q. In small grain, or corn?

A. In small grain.

Q. Do you know Roscoe Lyle.

A. Yes sir.

Q. Do you know of his claim to this land.

A. Yes sir.

Q. Do you know when he went on this land?

A. Yes sir.

Q. At that time?

A. On the 23rd.

Q. On the 23rd of October 1895?

A. Yes sir.

Q. After James A. Beacom had established his residence on there?

A. Yes sir.

Q. How long did Lyle remain in there, do you know?

A. I think the shanty was on there three or four days.

Q. Do you know anything about a lawsuit that Beacom and Lyle had over the possession of this land?

A. Yes sir.

Q. When was that?

A. Along this spring, in March I think.

Q. Do you know what the result of that lawsuit was?

A. The Sheriff put Lyle off.

Q. Do you know Mr. Bloom.

A. Yes sir.

Q. Do you know of his ever having possession of that land?

A. He had possession of a piece of it.

Q. When was that? How long ago?

A. It was in 1887 or 1888 I think.

Q. Do you know anything about his cropping it.

A. Yes sir.

— In the last few years.

A. He has cropped it himself a couple of years, and had it cropped.

247 Q. How much did he have in possession, do you know?

A. About half an acre, I guess.

Q. Did he ever establish any residence on this land?

A. No sir.

Q. He never had a house on there did he?

A. No sir.

Q. No improvements?

A. No sir.

Q. He never had anything else on there, except about a half an acre of breaking

A. That is all, I do not know how much there is in it, about a half an acre, may be a little more, or a little less.

Cross-examination by Mr. STEARNS:

Q. How far do you reside from this land?

A. I live on the northeast quarter.

Q. How far do you live from where Mr. Lyle's house is?

A. Well it is about a mile around the road, I guess.

Q. Were you on this land on the 22nd of October 1895?

A. Well yes, sir.

Q. Do you know that Mr. Lyle's house was not there on the 22nd of October 1895?

A. Yes sir, I know it was not.

Q. Positively?

A. Yes sir.

Examination by Mr. GRIFFITHS:

Q. You know Mr. Bloom you say?

A. Yes sir.

Q. Did you ever lease what you call a half acre of breaking that he had on this land?

A. Yes sir.

Q. You leased it from him?

A. I did not lease it from him, I rented it from him.

Q. You made arrangements with him for the use of it?

A. Yes sir.

Q. And agreed to pay him a share of what was grown on it?

A. Yes sir.

Q. And he has gotten that share, has he?

A. No sir, he did not get it.

Q. You renewed your statement that you would turn that over to him, a short time ago, did you not?

A. Yes sir; he said something to me about it and I told him to come and get it if he wanted it.

Q. When did you rent it?

A. In 1884.

[A.] Have you had it leased since that time?

A. No sir.

Examination by Mr. STEARNS:

Q. You spoke about Mr. Beacom's establishing his residence there? Did he build a house on it?

A. Yes sir.

248 Q. At the time he established his residence there in October?

A. No sir.

Q. Where was he living?

A. In a house that was on the place?

Q. It was not his house?

A. No sir, I think not.

Q. He simply moved into a house that was on the land?

A. Yes sir.

Examination by Mr. LOWERY:

Q. When did he put his house on there?

A. About the first of March I think, I do not know exactly when it was.

Q. Do you know whether Mr. Lyle staid over night there?

A. No sir, I do not.

Q. Where on this land was this piece of breaking that Bloom had?

A. On the northwest corner.

Examination by Mr. BARRETT:

Q. This piece of breaking that you described as a little strip of breaking that ran along in front of Mr. Bloom's house where he used to live?

A. Yes sir.

Q. Parallel with the road?

A. Yes sir.

Q. It is about as large a strip is it, as a man would break for a fire break?

A. Just about, I guess.

Examination by Mr. CONRAD:

Q. Mr. Dougherty do you remember having a law suit with Mr. Pasco about the possession of this quarter section?

A. Yes sir.

Q. This quarter section in controversy?

A. Yes sir.

Q. Did you have a trial?

A. Yes sir.

Q. A trial by a jury?

A. Yes sir.

Q. Was Mr. Bloom on that jury?

A. Yes sir.

Q. Did Mr. Bloom, in response to questions as to his qualification as a juror, state that he had no interest in this land?

Mr. GRIFFITHS: Objected to as incompetent, immaterial and irrelevant.

A. Yes sir, I guess he did.

Q. What year was that?

A. I think it was in 1888.

Q. It was long after the time that Mr. Bloom claimed possession was it?

Mr. GRIFFITHS: Some objection.

A. Yes sir.

249 Mr. GRIFFITHS: This matter that you speak of about Mr. Bloom serving on the jury was what year do you say?

A. In 1888.

Q. You are not sure what time it was?

A. Yes sir, it was in 1888.

Q. It might have been earlier than that?

A. No sir, it was in 1888.

Mr. GRIFFITHS: I move to strike out all the evidence of this witness in regard to this matter about the jury, and other matters as incompetent and immaterial.

Mr. JEWETT: That suit was amicably settled was it not?

A. Yes sir.

Witness excused.

Mr. CONRAD: We rest.

Mr. LOWERY: The attorney for Louis Hoffman, homestead applicant, who made the first application on the 27th day of February 1896, the day the land was open for entry, now moves to dismiss the application of the applicant James A. Beacom, to enter the lands under the homestead laws, for the following reasons:

First. Because the application made on the 23d day of January 1896, to make proof under the act of Congress approved March 3, 1887 is without authority of law, without force or effect and is not an application to enter the land under the homestead laws.

Second. Because no application was made to enter the land in controversy as a homestead under the homestead laws, until the 12th day of May 1896, and subsequent to the application of Louis Hoffman, who made the first application on the day of opening, February 27th, 1896.

Third. For the reason that the claimant James A. Beacom, is unqualified to enter the land in controversy under the homestead law, having on the 26th day of May 1893, made application No.

5056, at the Devils Lake Land District in North Dakota, for the Southwest quarter of Section 55, Township 152, Range 72, and voluntarily abandoned the same; and I move that his application be dismissed, and that the application of Louis Hoffman be declared a prior application to that of James A. Beacom and all homestead applicants by amendment, or in any manner changing the application of James A. Beacom, filed in the United States Land Office on the 12th day of May 1896, that the same is without authority, and vitiates the first application filed.

250 Mr. CONRAD: Now at this time, the homestead applicant, James A. Beacom, the evidence showing that he is in every way qualified to take said land as a homestead; that he has established and maintained a residence on the land in controversy since the 22nd day of October 1895, he has a house on the same in which he has resided during the interval from October 22nd, 1895, until the present time; that he has the entire 160 acres in crop and, under the foregoing evidence, we ask that our homestead application filed here on the 12th day of May 1896, be accepted and made of record, and that the receiver's receipt issue to him therefor.

And, we ask leave to add to said homestead affidavit, which was omitted at the time the fact that the applicant did, in the year 1893, file on the Northwest quarter of 35 Township 157, Range 72, but that he has never proved up on the same or received a patent therefor and has abandoned the same.

And now, at this time, we renew our tender of \$18 as filing fee, and any other and further sum for taking and transcribing the evidence in this matter.

REGISTER: The tender at this time is refused; and the ruling on the application is reserved.

Mr. GRIFFITHS: Claimant Bloom objects to the allowance of any amendment or the alteration of the homestead application of James A. Beacom filed on May 12th, 1896; and calls attention to the evidence, that although permission is asked to make such alteration, and ruling thereon reserved, such alteration has been made; and the records in this office mutilated and altered to that extent.

ROSCOE LYLE, called as a witness in his own behalf, examined in chief by Mr. STEARNS, testified as follows:

Q. State your name, age, and place of residence.

A. Roscoe Lyle, age 24, residence, O'Brien County Iowa; Floyd Twp.

Q. Are you the homestead claimant to the southwest quarter of section 3-97-42.

A. Yes sir.

Q. When did you first go upon this land?

A. On the 22nd day of October 1895.

Q. What was your first act of settlement at that time?

A. On the 22nd day I went on there with a covered wagon.

Q. Did you stay there that night?

A. Yes sir.

Q. Did you do any work on the land?

A. Yes sir.

Q. What work did you do on that time?

A. I plowed a little.

Q. When did you first build your house upon the land?

251 A. On the 23rd day of October.

Q. At what time?

A. Between 8 and 9 o'clock in the morning, I guess it was.

Q. Describe that house.

A. It is 12 feet long, 8 feet wide and 7 feet high.

Q. Shingle roof?

A. Yes sir.

Q. Painted?

A. Yes sir.

Q. Finished inside?

A. Yes sir and sided up.

Q. Is it a comfortable dwelling house?

A. Yes sir.

Q. It has a door and windows in it?

A. It had a window and a half in it, and a door.

Q. What did you do there that day after getting your house on the land?

A. That afternoon I went out to plow.

Q. When you moved this house upon the land did you have any household furniture, if so describe it?

A. I had a table, stove, chairs, dishes and a bed.

Q. You staid there right along, did you?

A. Yes sir, every night of course I did not stay there all the time in the day time.

Q. Did you cook and live there?

A. Yes sir, I ate my breakfast and supper there every day, and once in a while my dinner.

Q. How long did you remain on the land?

A. I went there on the 22nd and the 24th they moved my house off.

Q. Who moved it off?

A. One of Jim's brothers and Charles Dougherty here.

Q. Just name the parties.

A. Thomas Beacom, Charles Dougherty, and John Beacom, and Pat Beacom, I guess was there.

Q. What was said when they came up there to move the building off?

A. I was not there; I was at Sanborn.

Q. Was it moved off before you came back from Sanborn?

A. Yes sir.

Q. When you came back and found the house moved off what did you do then or attempt to do?

A. I went over there to move it right back on again.

Q. Did you take your teams?

A. Yes sir.

Q. Why did you not move it back on?

A. They said if I attempted to move it back on they would split it all to pieces, they had axes there.

Q. How many of them were there then?

A. Ten or eleven of them.

Q. Did they threaten any violence if you attempted to move the building?

Mr. CONRAD: Objected to as incompetent, immaterial and irrelevant. Overruled. Exception.

252 Q. Did you leave the house stand in the road?

A. Yes sir.

Q. Why did you not put it on right away again?

Mr. CONRAD: Objected to for the same reason.

A. They said if I moved it back on they would split it all to pieces.

Q. How soon did you get the house back on there?

A. The 20th of March.

Q. Did you live in the house after that?

A. Yes sir.

Q. How long?

A. From the 20th of March until the 13th of April.

Q. Did you have your house furnished at that time?

A. Yes sir.

Q. Did you regularly live there and make it your home?

A. Yes sir.

Q. When did you first offer filing on this land?

A. The 5th of February.

Q. You had your papers made out in Primghar before the Clerk of the Court had you?

A. Yes sir.

Q. What was done with the papers?

A. They were sent to the land office.

Q. And tender made?

A. Yes sir.

Q. And filing fee?

A. Yes sir.

Q. When did you file again?

A. The 20th of March.

Q. The filing fees were tendered at that time were they?

A. Yes sir.

Q. Do you know anything about Mr. Bloom's improvements?

A. Yes sir.

Q. What improvements has he?

A. He has a little strip broke along the side of the road.

Q. Where relative to this building on his own place?

A. Just across the road.

Q. Do you know whether that breaking was put there for the purpose of homesteading or as a fire break?

A. It looked more like a fire break.

Mr. GRIFFITHS: Objected to as immaterial, and irrelevant, and move to strike it out.

Examination by Mr. GRIFFITHS:

Q. How long have you known Mr. Bloom having that piece of breaking there?

A. Seven or eight years.

Q. You know that he has had possession of that land and been raising crops there right along, do you not?

A. No, I do not know as to that.

Q. But you know that he has that breaking there?

A. Yes sir.

253 Q. You had never had any conversation with him as to the object of it?

A. No sir.

Q. You do not know anything about that?

A. No sir.

Examination by Mr. CONRAD:

Q. When did you say you first went on this quarter?

A. On the 22nd day of October.

Q. What time of night?

A. About seven o'clock.

Q. How did you go on?

A. With a covered wagon.

Q. Did you [sat] all night there?

A. Yes sir.

Q. Where did you sleep?

A. In the wagon.

Q. What did you do with your horses?

A. I did not have any horses.

Q. How did you get the wagon there?

A. With horses.

Q. You took your horses home, did you?

A. No sir, it was the old man's team.

Q. You and the old man went there with a team and pulled the wagon on there and established a residence?

A. Yes sir.

Q. When did you put a house on there?

A. On the 23d.

Q. What time?

A. Between 7 and 8 o'clock.

Q. Did you build it between 7 and 8?

A. No sir I did not.

Q. Did you have it already built?

A. Yes sir.

Q. You had a house ready did you?

A. Yes sir.

Q. Were you expecting this?

A. Yes sir.

Q. How did you get the house on there?

A. Moved it on there.

Q. How far did you move the house?

- A. A little over a half mile.
- Q. Who had been living in that house prior to the time you called it on there?
- A. Nobody.
- Q. What had you been using it for?
- A. For a summer kitchen.
- Q. How long did that house stay on there?
- A. The first time?
- Q. Yes sir.
- A. I moved it on there the 23d; and they moved it off the 24th.
- Q. Did you see Beacom & Dougherty and the others moving it there?
- A. No sir.
- Q. Where did they take it to?
- A. Out on the road.
- Q. When did you move it back?
- A. The 20th of March.
- Q. Did it stand in the road all that time?
- A. Yes sir.
- Q. Where was your residence, were you living out there in the road?
- A. No sir.
- Q. You had established a residence in this house, had you not?
- A. Yes sir.
- Q. What did you do with it?
- A. It was in the road.
- 54 Q. Did you sleep and eat and cook there in the road?
- A. No sir.
- Q. You just let the house set there and you staid with the old man did you?
- A. Yes sir.
- Q. Then you put it back on there, did you?
- A. Yes sir.
- Q. What time of day did you put it back on there?
- A. About 5 o'clock in the evening.
- Q. Did you stay in it that night?
- A. Yes sir.
- Q. Then what happened?
- A. Jim Beacom sued me for possession then.
- Q. When did the trial come off?
- A. The 11th of April.
- Q. He got possession of it, did he not, at that trial?
- A. Yes sir, he beat me.
- Q. And the sheriff pulled your house off?
- A. Yes sir.
- Q. Where is it now?
- A. In the road.
- Q. Is your residence there in the road now?
- A. Yes sir.
- Q. That is all you have done relative to this land, is it?
- A. I plowed it.

- Q. How much did you plow?
A. Pretty nearly a round and a half around thirty acres.
Q. Why did you not finish the second round?
A. Beacom came over there and pulled his revolver out and told me to stop that.
Q. Did he pull his revolver on you?
A. Yes sir.
Q. What time was that?
A. That must have been about two or half past two o'clock.
Q. In the afternoon?
A. Yes sir.
Q. What month?
A. October, 23rd.
Q. On the 23rd of October?
A. Yes sir.
Q. That was last October?
A. Yes sir.
Q. That was before you had any trouble about the question of title?
A. Yes sir.
Q. You went ahead and did just as you have stated after that?
A. Yes sir.
Q. That was the first day you moved on there?
A. Yes sir.

Examination by Mr. STEARNS:

- Q. Where was this suit had?
A. Before a justice of the peace in Sheldon.
Q. You say that Mr. Beacom got an order to eject you from the land?
A. Yes sir.
Q. What was done with that suit?
A. It was appealed.
Q. You appealed it, did you?
A. Yes sir.

Mr. JEWETT: We admit it is now pending.

255 Mr. STEARNS: Are you married or single?

- A. Single.
Q. Do you have to work for a living?
A. Yes sir.
Q. Who do you work for generally?
A. For Mr. Lyle.
Q. Your father?
A. Yes sir.
Q. You are at your own house at all times when you are not out working for wages, are you?
A. Yes sir.
Q. Do you own this house you have there?
A. Yes sir.
Q. You bought it and paid for it?
A. Yes sir.

Examination by Mr. CONRAD:

- Q. When did you buy that house?
 A. The 20th day of March I believe.
 Q. You had not bought it, then when you moved it on there?
 A. Not March, but October.
 Q. You bought it the 20th of October, did you?
 A. Yes sir.
 Q. Before there was any decision?
 A. Yes sir.
 Q. You had the house already bought?
 A. Yes sir.
 Q. What did you give for it?
 A. \$30.
 Q. Who did you buy it of?
 A. My father.
 Q. Did you pay him?
 A. Yes sir.
 Q. What in?
 A. Money.
 Q. What kind?
 A. Hard money.
 Q. Do you mean to say you pulled out 30 dollars and paid your father for that house?
 A. Yes sir.
 Q. When did you pay it?
 A. The day I bought it.
 Q. What did you buy it for at that time?
 A. We expected the decision in regard to this land, and I thought I would get the house, so that if it went back I could move it onto that land.
 Q. From what source did you learn that the decision was about to be rendered from whom did you get your information that a decision was about to be rendered?
 A. Oh, from quite a number of them.
 Q. What was you doing on the 20th, where were you?
 A. At home.
 Q. You were at home?
 A. Yes sir.
 Q. What were you doing that day?
 A. I think I was hauling grain down to Sheldon.
 Q. If you were not hauling grain, what were you doing?
 A. Plowing.
 Q. If you were not hauling grain you were plowing?
 A. Yes sir.
 Q. Do you now know that the 20th was Sunday?
 A. I did not take much notice whether it was Sunday or not
 I [I] know that it was on the 20th that I bought the shanty.
 256 Q. If the 20th was on Sunday you bought it on Sunday?
 A. Yes sir.
 Q. And you paid your father the money on Sunday?
 A. Yes sir, if it was Sunday I did.

Q. Do you observe Sunday up in O'Brien County?

A. Well I guess they all do.

Q. Was that before or after you came from church that you bought this?

Mr. STEARNS: Objected to as immaterial.

Sustained; Exception.

Q. You know that you did not buy this house on Sunday do you not?

A. It was along somewhere near the 20th; It was on the 20th I am [no] not sure whether it was Sunday or not.

Q. You do not mean to say that you and your father had a dicker on Sunday?

A. Of course we did not have any dicker about it.

Q. You did not buy the shanty on the 20th did you?

Mr. STEARNS: Objected to; sustained; exception.

Examination by Mr. LOWERY:

Q. Mr. Lyle, you did not live in the house when you first put it on there did you?

A. Yes sir, I did.

Q. How many days did you live there?

A. I moved it on there on the 23d, and I was there pretty Nearly all that day, and I went out plowing, and I went to Sanborn and got back about sundown.

Q. When was it moved off?

A. The 24th.

Q. You did not stay all night there the 23d did you?

A. Yes sir.

Q. Who was with you?

A. My father.

Q. He staid all night with you, did he?

A. Yes sir.

Q. What kind of a bed did you have in there?

A. I had a good bed.

Q. Where did they move the house to?

A. Out in the road.

Q. Which way?

A. South.

Q. Where was the house located?

A. On the southeast quarter.

Q. How many nights did you stay there on the southeast corner between that time and the 20th of March?

A. I did not stay there any nights.

Q. Did you move the house back on the land the 20th of March?

A. Yes sir.

Q. Who moved it off?

A. The sheriff.

257 Q. When was that done?

A. The 13th of April.

Q. Where did he move it to?

- A. Out into the road.
 Q. You have not staid in the house since then?
 A. No sir.
 Q. Then you never staid but one night on the land?
 A. Yes sir.
 Q. How many nights did you stay on the land?
 A. Every night the shanty was on there.
 Q. How many nights was it on there?
 A. I staid there all the time the house was on there.
 Q. You made no effort to go back on this land after the house was moved off of there, did you on the 23d?
 A. It was moved off on the 24th.
 Q. Did you make any effort to go back on the land?
 A. Yes sir.
 Q. When?
 A. That night, the 24th.
 Q. You moved it onto the land again the night of the 24th?
 A. No sir, I did not move it on the night of the 24th; They said they would mash it all to pieces.
 Q. Who was with you when [you] told you that?
 A. My father and my brother.
 Q. Who told you that they would mash it all to pieces?
 A. It was dark, and I could hardly tell who said that.
 Q. Could you see who they were?
 A. I talked with them; they all stood there together.
 Q. You went over there after dark, did you, to put this building on?
 A. I went back as quick as I got home.
 Q. Who went over there with you?
 A. My father and brother.
 Q. What day of the month was that?
 A. The 24th.

Examination by Mr. STEARNS:

- Q. What is the value of that house?
 A. Oh, about \$30.00.
 Q. Had you any other improvements there?
 A. No sir.
 Q. You went on this land, did you, for the purpose of making a homestead?
 A. Yes sir.

Examination by Mr. LOWERY:

- Q. When did you first made application to enter this land?
 A. I think it was about the 5th of January.
 Q. Where did you file your papers?
 A. In Prighar.
 Q. Do you know whether they were ever received at the United States Land Office or not?

Mr. STEARNS: The records will show that the papers were filed and fees tendered.

Q. Do you know whether or not your application was rejected?

A. I think not.

(Witness excused.)

N. BLOES, called as a witness in support of the applicant, Roscoe Lyle, examined in chief by Mr. Stearns testified as follows:

Q. State your name, age, and place of residence.

A. N. Bloes, age 37, residence Sheldon, O'Brien County, Iowa.

Q. What section do you live on?

A. Section 10, Township 97, Range 42.

Q. How far from this land?

A. A mile; or a little over a mile, perhaps.

Q. Are you acquainted with Mr. Roscoe Lyle?

A. Yes sir.

Q. Are you acquainted with the land in controversy?

A. Yes sir.

Q. The southwest of 3-97-42?

A. Yes sir.

Q. Do you know when Mr. Lyle first moved on this land?

A. On the 23rd day of October 1895 I seen him moving a shanty there in the morning.

Q. Were you at the house?

A. I was in the road.

Q. You did not go into the house?

A. I was in the house last Sunday.

Q. But you were not in it about that time?

A. No sir.

Q. Do you know whether he lived there after moving onto the land?

A. I cannot say as to that.

Q. What is the value of this house?

A. About \$25 or \$30.

Q. Can you describe it, as to what kind of a house it is?

A. About 12 feet long, I think and 6 feet wide?

Q. Shingle roof?

A. Yes sir and a door and a window and a half window, and a floor.

Q. Is it a comfortable house to make a bachelor's home?

A. Yes sir.

Q. Do you know how long this house remained on the land after it was first put on there on the 22nd of October?

A. I could not say for sure whether it was moved [of] the same day or the next.

259 Q. Were you there when it was moved off?

A. No sir.

Q. You saw it after it was moved off?

A. Yes.

Q. Where was the house left?

A. It stood in the road.

Q. Do you know who moved it off?

A. No sir.

Q. Do you know when it was moved back on there again?

A. Some time in March.

Q. How long did it remain there then?

A. Somewhere about two weeks.

Q. Do you know how it came to be taken off the land again?

A. They had a suit about it and the constable moved it off?

Q. Where did the constable move the house.

A. Out in the road.

Q. Is it there yet?

A. Yes sir.

Q. Mr. Lyle did not have anything to do with the moving of it?

A. No sir, not that I know of.

Q. Are you related to Mr. Lyle in any way?

A. No sir.

Q. You have no interest in this claim?

A. None at all.

Examination by Mr. CONRAD:

Q. Do you know when Lyle first went on this land.

A. No sir.

Q. Do you know James Beacom, and when he went on there?

A. No sir.

Q. You do not know whether he was there when Lyle was there or not?

A. No sir.

Examination by Mr. LOWERY:

Q. You do not know whether Lyle ever staid all night on that land prior to the 20th of March?

A. I do not know whether he staid there or not.

Q. Where was the house moved to there?

A. South of the road.

Q. When it was moved on there where was it moved?

A. On the southeast corner.

Q. Was there any fence between the southeast quarter and the southwest quarter?

A. No sir.

Q. Were you at the house after it was moved on the land in October?

A. I went past it; I was not in it.

Q. You did not make special efforts to ascertain whether it was on this quarter or not, did you?

A. I could see the southeast corner stake there and I saw it was on the west side of the line.

260 Examination by Mr. GRIFFITH.

Q. You know Mr. A. B. Bloom, do you?

A. Yes sir.

Q. How long have you known him?

A. Nine years.

Q. Do you know of his having any breaking on this land in controversy?

A. By hearsay only.

Q. You do not know anything of your own personal knowledge about it?

A. No sir.

Q. But you have heard that he had some on there for how many years?

A. About nine years ago.

Q. You heard it when he came there nine years ago?

A. Yes sir.

Q. You understood that he claimed it ever since?

A. Yes sir, that is what he claimed.

(Witness excused.)

JAMES CUTSINGER, called as a witness on behalf of Roscoe Lyle examined in chief by Mr. Stearns, testified as follows:

Q. State your name, age and residence.

A. James Custinger, age fifty-four, residence Osceola County, Iowa.

Q. On what section, township and range do you live?

A. On the southwest quarter of 24-98-42.

Q. How far from the land in controversy.

A. About a mile and a quarter to the nearest point.

Q. Are you well acquainted with the land?

A. Yes sir.

Q. Are you acquainted with Roscoe Lyle?

A. Yes sir.

Q. Do you know when he first went upon this land and claimed it as a homestead?

A. No sir, I do not.

Q. Do you know that he had a house on there?

A. I did not know it at the time; I did a few days after he went on there, I saw the house on there, but I did not know what time it was put on there.

Q. About what time did you see it on there?

A. Three or four days after the 22nd of October.

Q. It was about that time that it was taken there?

A. Yes sir.

Q. Do you know anything about its being moved off?

A. Only what I have heard.

Q. Nothing personally?

A. No sir.

Q. Do you know what the description of the house is?

A. It looks to be about 8 by 10 or 12.

Q. It is a well built house?

A. Yes sir, shingle roof, windows and doors and a floor
261 in it.

Q. Do you know anything about his having it furnished?

A. Yes sir.

Q. He had furniture in there had he?

A. Yes sir.

Q. Do you know anything about his living there?

A. No sir, I do not.

Q. Do you know anything about the house being put on there
the second time.

A. I was passing by there on the 23rd of March and there was a
house there at the time.

Q. Did you see Mr. Lyle about there that day?

A. No sir.

Q. Did you at any time?

A. Yes sir, I saw him there a few days ago.

Q. How long did the house remain on there at that time?

A. I do not remember, three or four weeks I should judge.

Q. Do you know what that house was worth?

A. About \$30 or \$40 perhaps, or may be more.

Q. Are there any other improvements on this land except the
house of Beacom's.

A. Nothing more than breaking; no more buildings.

Q. Is there anyone living there besides Beacom?

A. No sir, not on that land.

Q. Did Mr. Beacom live there?

A. Mr. Pasco never lived there himself his mother lived there.

Q. That was a good many years ago?

A. Yes sir.

Q. Mr. Pasco owned the land under contract at that time?

A. Yes sir, he bought it.

Q. Do you know about the house being removed after it was
taken there the second time?

A. No sir, I do not.

Q. You know it has been taken off the land?

A. Yes sir.

Q. Do you know how that occurred?

A. No sir.

Q. Where does it sit now?

A. Out in the road.

Q. Are you in anywise related to Mr. Lyle?

A. No sir.

Examination by Mr. LOWREY:

Q. Where do you live?

A. In Osceola County.

Q. Whereabouts in Osceola County?

A. On the southeast quarter of 9.

Q. Were you down near this alleged house on the 23d day of October 1895?

A. No sir.

Q. Were you there on the 24th day of October?

A. No sir.

Q. Where were you that you knew that the house was on the land?

262 A. On the 23d day of March I had reference to,
Q. Then you do not know anything about the building having been on the land in 1895?

A. No sir, I could see, from my house, a house.

Q. But you do not know whether it was on that land or not?

A. No sir.

Q. How near were you to it in March?

A. I was right along the road by it.

Q. Where was it then?

A. On the land at that time.

Q. Whereabouts on the land?

A. On the southeast quarter.

Q. Was there anybody living in it at that time.

A. I did not see anyone around there.

Q. Who lives on the northwest quarter?

A. No one lives there now.

Examination by Mr. JEWETT:

Q. How long have you known the land, the southwest quarter of 3?

A. Ten or eleven years.

Q. Who made the first improvement on this quarter section?

A. The first time I knew the land there was a few furrows broken on the north side clear through and Mr. Bloom had a small piece on the northwest corner.

Examination by Mr. GRIFFITHS:

Q. A. B. Bloom?

A. Yes sir.

Q. What shape was that breaking in?

A. Along the road running north and south.

Q. Did you ever have any conversation with him relative to that breaking?

A. Yes sir.

Q. Did he state to you at any time the purpose for which he broke it?

A. He said if it ever went back he was going to try to use it as a homestead.

Q. Did he state to you at any time that he broke it for any other purpose?

A. No sir.

Q. How wide a stripe was it?

A. I should judge it was a rod or two wide.

Q. About how much in it all together?

A. I should judge about a half an acre.

Q. How long was it north and south?

[Q.] It must have been thirty or forty rods.

Q. He never said anything to you about its being a fire break?

A. No sir.

Q. There was a small shanty on the land some years ago?

A. Mr. Pasco put that on there.

Q. What year?

263 A. 1887 or 1888 I think.

Q. Did he live in it at any time?

A. I do not think he did himself, his mother lived there awhile.

Q. How long?

A. Quite a while.

Q. Where was he living at that time?

A. About a half a mile north from there.

Q. Have you known of any other person living on it besides Mrs. Pasco until since October?

A. Yes sir, Mr. Dougherty lived on it awhile.

Q. When was that?

A. When he and Mr. Pasco had the suit about it.

Q. In what house did Mr. Dougherty live?

A. He built one of his own.

Q. And this matter was settled up between them?

A. I understood so.

Q. What became of the building that Dougherty had lived in awhile?

A. He moved off.

Q. As a result of the adjustment with Mr. Pasco?

A. Yes sir.

Q. Do you know whether Mr. Dougherty had paid anything in that settlement?

A. I heard that he paid Mr. Pasco \$100, to give peaceable possession.

Q. You mean that Pasco gave him \$100?

A. Yes sir.

Q. You have known of Mr. Pasco's purchase from the railroad Company.

A. Yes sir, from what he told me.

Q. You knew of his breaking out the land?

A. Yes sir.

Q. And continuing to crop and improve it for number of years?

A. Yes sir.

Q. You knew of the sale of Mr. Patterson did you?

A. Yes sir.

Q. You knew of Pasco going off and Patterson going on it?

A. Yes sir.

Q. The land has been used since that time by the tenants of Mr. Patterson from year to year?

A. Yes sir.

Examination by Mr. STEARNS:

Q. Did Mr. Bloom ever live on this land?

A. Not that I know of.

Q. He had no house on there?

A. No sir.

Examination by Mr. GRIFFITHS:

Q. When did you first know of Mr. Bloom's having breaking on there?

A. Ten or eleven years ago.

Q. Along about 1884?

A. About 1885 or 1886.

Q. Do you know whether or not he has had possession of that plowed land of his ever since then?

264 A. He has had it rented for the last two or three years; that is, he farmed it himself up to within two or three years.

Q. Since then what has he done?

A. He told me he had rented it to a party.

Q. Do you know whether he has it in crop this year?

A. Only from what I have been told.

Examination by Mr. JEWETT:

Q. You stated that Mr. Bloom informed you that he had rented this piece of land to the tenants of Mr. Patterson?

A. Yes sir.

Q. Did you ever have any talk with the tenants about it.

A. I had with Dougherty.

Q. Did he tell you he had rented it from Mr. Bloom?

A. Yes sir.

Q. Did you hear Mr. Dougherty's testimony today, that he had taken all those crops and accounted for them?

A. Yes sir.

(Witnesses excused.)

WILLIAM LYLE, called as a witness on behalf of Roscoe Lyle, examined in chief by Mr. Stearns, testified as follows:

Q. State your name, age and place of residence.

A. William Lyle, I will be 53 years old next October.

Q. How near do you live to the land in controversy?

A. A little over a half mile.

Q. Is Roscoe Lyle the claimant in this case your son?

A. Yes sir.

Q. Do you know when he first went upon this land?

A. I do.

Q. What act did he perform towards making a settlement there?

A. He went on there the 22nd of October.

Q. How did he go on there?

A. With a lumber wagon.

[A.] A Covered wagon?

A. Yes sir.

Q. Did he stay on there that night?

A. Yes sir.

Q. Were you on there with him?

A. Yes sir.

Q. Did you stay with him that night, or did you go home?

A. I went home and came back again.

Q. And staid there all that night?

A. Yes sir.

Q. When did he move his building on there?

A. The next morning between 7 and 8 o'clock.

Q. Who was on there when he moved on there?

A. There was no one there at that time?

265 Q. What kind of a building did he put on there?

A. He had 'a little frame house, 8 by 12, well made, painted up, cornice on it, good No. 1 shingle roof; it was a little out building we had on the farm, and I sold it to him.

Q. What did he give you for it?

A. \$30.

Q. How did he pay you for it?

A. In cash.

Q. What was the building worth?

A. Well it cost pretty nearly \$30.

Q. What else did he have in the house there?

A. He had a good bedstead, and a good mattress on it, and a good spring on it, and a stove, a little heater, and an oil stove, chairs, table and dishes pie pans and kettles.

Q. Did he go to living there in the house?

A. Yes sir.

Q. How long did he stay there before he was molested?

A. He moved there on the 22nd of October, and they moved him off the 24th.

Q. Were you there when the building was moved off?

A. No sir.

Q. Was your son there?

A. No sir.

Q. Where were you that day?

A. At Sanborn.

Q. Where was he that day?

A. At Sanborn.

Q. What time did he get back?

Q. It was most dark when we got back.

Q. Did you come by the place when you came back?

A. No sir, the place was a half a mile further west.

Q. What did Roscoe do when he got back?

A. He went over there to put up over night, and he saw his shanty was gone; they had a chain about 18 feet long; and we went back and cut some skids, and took them out there, and when we went back there to move it there was a lot of them around there,

and one or two of them had axes there, and they swore they would split the shanty to pieces if we attempted to move it.

Q. How many do you think there were there all together?

A. Seven or eight of them.

Q. A mob?

A. Yes sir a regular mob; we saw it was no use trying to move it on.

Q. They told you that you could not move it on, did they?

A. Yes sir.

Q. How soon did he attempt to move it on again?

A. He moved it on the 20th of March.

Q. What did he do then?

A. He lived there until they moved it off again.

Q. What time did they move it off?

A. Some time in April; I think it was the 20th of April.

Q. Did Roscoe live there during the time the house was there?

A. Yes sir.

266 Q. Has he lived in the house since it was moved off?

A. Yes sir.

Q. He staid there occasionally of nights, did he?

A. Once in a while.

Q. His things were still in the house?

A. Yes sir.

Q. Where does the house now sit?

A. On the south side of the road.

Q. How came it to be moved off of there in April?

[Z.] They had a suit there before a justice of the peace, and the justice decided it before it was tried.

Q. What was the decision of the justice court?

A. They decided that Jim Beacom had the best right there, and the court ordered the house moved off.

Q. Did the court issue an order?

A. Yes sir.

Q. Who moved it off?

A. An officer.

Q. Under what authority did he move it?

A. I do not know.

Q. He had no order?

A. He had orders from the justice of the peace.

Q. Roscoe did not have anything to do with moving it off?

A. No sir.

Q. What became of this suit since?

A. It is pending on appeal.

Q. Does Roscoe work with you?

A. Yes sir.

Q. He occupies this place all the time, excepting when he is out working?

A. Yes sir.

Q. Is he wealthy?

A. Yes sir.

Q. He is wealthy?

A. Oh no, he is poor.

Q. He has to work to earn a livelihood, does he?

A. Yes sir.

Cross-examination by Mr. JEWETT:

Q. Mr. Lyle in this action in justice court, that you referred to, was between Mr. Beacom and your son Roscoe Lyle, was it?

A. Yes sir.

Q. No other parties were involved in that proceeding?

A. I believe Mr. Patterson was.

Q. Do you know whether there was anybody else in the case or not?

A. I think he was; I would not be certain though.

Q. Was not that a suit by Mr. Beacom against Roscoe Lyle?

A. Yes sir.

Q. As between those two parties, the decision of the justice was that Mr. Beacom had the best right as against your son?

A. Well it was adjourned.

Q. Mr. Patterson came in?

A. It was adjourned once.

[A.] Did he come in?

A. Yes sir, I think he did.

267 Q. Do you know anything personally as to whether he did or not?

A. He was there, and I think he was sworn.

Q. Mr. Patterson was there as a witness in the case, was he not?

A. I think he was, I could not tell whether he had any interest in it or not, I think he had an interest in that suit, but I could not tell as to that.

Q. Why did you think Mr. Patterson had an interest in the suit?

A. It was adjourned once; and I went to his attorney, and he said it was put over so as to have Mr. Patterson come in with us.

Q. You knew that Mr. Patterson was claiming the land?

A. Yes sir, under the contract.

Q. And has for several years?

A. Yes sir.

Q. So you supposed he would be a proper party to come into the case?

A. Yes sir.

Q. So you supposed he would be a proper party to come into the case?

A. Yes sir, they asked my boy if he would be willing for him to come in and I said yes; and it was adjourned on that account.

Mr. STEARNS: Mr. Patterson did not you give any consent to go on the land?

A. No sir.

Examination by Mr. LOWERY:

Q. Did you stay all night in that wagon with your son?

A. Yes sir.

- Q. What night was that?
A. On the 22nd of October.
Q. When did they move the house?
A. Between 7 and 8 o'clock the next morning.
Q. You staid all night with him on the night of the 23d again, did you?
A. Yes sir.
Q. When was the house moved off of there?
A. On the 24th of October.
Q. I thought you said in answer to Mr. Stearns that you went home?
A. I did.
Q. And then you went back and staid all night with him, did you?
A. Yes sir.
Q. Is that so?
A. Yes sir.
Q. Whose covered wagon was this?
A. It was mine.

Examination by Mr. JEWETT:

- Q. Mr. Lyle when did you sell that building that small house to your son?
268 A. I sold it before the land went back again; because my boy has been watching for that claim a couple of years; he wanted to know what I would take for it, and I did not think he would take me up and I told him I would take \$30.
Q. Your son testified it was on the 20th of October, was it on Sunday [Sunday]?
A. Well it might have been; I could not answer for certain, whether it was or not.

Mr. LOWERY: He swore that he was hauling grain that day down to Sanborn, did you haul any grain to Sheldon or Sanborn on Sunday.

A. I guess it was the day the land went back, the 22nd.

Mr. JEWETT: He stated that it was the 20th of October, and if that day was Sunday, then it was Sunday.

A. I guess he did not draw any grain on Sunday, because we did not often draw grain on Sunday.

Mr. LOWERY: He said if he did not draw grain he was plowing; do you plow on Sunday?

A. Sometimes they do up there.

Examination by Mr. GRIFFITHS:

- Q. Do you know Mr. A. N. Bloom?
A. Yes sir.
Q. How long have you known him?
A. I have known him ever since 1872.
Q. He lived there near this land in controversy, did he, for a time?

A. Yes sir, right across the road.

Q. You knew of his having some plowing on this land, did you?

A. Yes sir.

Q. When did he do this plowing?

A. The first he did was he broke a little strip along there to keep the fire from running into his buildings.

Q. Did he tell you that he did it to keep the fire from running into his building?

A. Yes sir, he said that he thought the fire break was not hardly wide enough. It was about thirty rods long.

Q. Did he say anything to you about taking the land as a homestead if it became Government land?

A. Not that I remember of.

Q. You knew that he had been plowing there?

A. Yes sir; I knew he had that little strip.

Q. You knew of his raising crops on it?

A. No sir, I did not; I never saw any crops on there.

Mr. STEARNS: Did Mr. Bloom live on that land ever?

A. No sir.

269 Q. You sold and delivered the house to Roscoe, turned it over to him, somewhere about the time the decision was rendered?

A. I think it was just a little while before the decision was rendered; they were looking for it every day.

(Witness excused.)

Mr. STEARNS: We will again tender our filing made on the 20th of March and filed in this office on the 23, which recites that the fees were tendered. It also alleges that settlement was made on the 22nd day of October, 1895, claiming the same under the homestead laws of the United States. And also make a tender of the Land Office fees for the purpose of taking the evidence and reducing it to writing, and ask that the Receiver's homestead receipt be issued to Roscoe Lyle, for the South West quarter of 17-97-42 excepting one acre in the Southwest corner, now occupied for school purposes.

REGISTER: The tender at this time is refused, and ruling on the motion reserved.

Mr. LOWERY: The attorney for Louis Hoffman who made the first application to enter the land in controversy on the 27th day of February, 1896, for the reason that the application made by this claimant on the 28th day of January was rejected by the Register and Receiver and his application closed against him.

And for the further reason; that his application made to make proof under the act of March 3d, 1887, is without authority of law because he was not an actual bona fide resident on the land.

And for the further reason; that the applicant Grant Lyle never at any time prior to the 27th of February, 1896, established a bona fide residence on the land in controversy. And that all applications filed by the said Grant Lyle, are junior and inferior to the application of Louis Hoffman, which was made as above stated, on the

27th day of February, 1896, at 9 o'clock 6½ minutes was the first legal application for the land in controversy after the same became subject to disposition under the homestead laws of the United States and in accordance with the order and direction of the Honorable Commissioner of the General Land Office and Secretary of the Interior and move to dismiss his application.

Mr. STEARNS: We rest.

A. D. BLOOM, called as a witness in his own behalf; examined in chief by Mr. H. H. Griffiths, testified as follows:

270 Q. State your age and occupation?

A. I am 66 years old, I am living at Ashton, Osceola county, Iowa.

Q. You know the land in controversy?

A. Yes sir, I do.

Q. How long have you known this land?

A. Since 1871.

Q. Do you make any claim to this land?

A. I do.

Q. What is the nature of it?

A. In the fall of 1875 or 1876, I broke either eight or ten furrows from the northwest corner down pretty nearly to the southwest corner for a fire break. In 1884 when they commenced squatting on it, I broke on the north eighty about twenty four or twenty five wider and put it into potatoes; so that if it went back to the Government I would be the first one that ever did anything on it and I would have the first show to homestead it.

Q. Your intention has been since 1884 to secure this land from the Government?

A. Yes sir.

Q. How long did you remain in possession of the land?

A. From that time until the present time, I plowed it a year ago last fall. I rented it to Thomas Beacom, and he put it in this spring.

Mr. LOWERY: Objected to as immaterial, and move to strike it out because the testimony does not show that he was a settler on the land.

Q. You have raised crops on this land ever since 1874 up to 1893?

A. Yes sir.

Q. What did you do in 1893?

A. I had it plowed and I let it to a man to have for a garden if he wanted to.

Q. What was his name?

A. I do not know.

Q. Did he pay you for it?

A. No sir.

Q. What did you do with it in 1895?

A. I rented it to Thomas Beacom.

Q. In 1894 whom did you rent it to?

A. To Charles Dougherty.

[A.] It was in 1893, that you let some one have the use of it?

A. Yes sir.

Q. Have you ever made homestead application on this land?

A. Yes sir, twice I filed on it.

Q. When?

A. In October, 1895, I made the first application.

Q. When did you make your second application?

A. It was after that was rejected some time; I could not tell you what time.

Q. You are a native born citizen of the United States?

A. Yes sir.

Q. Where were you born?

271 A. In the State of New York.

Q. Have you lived continuously in the United States ever since that time?

A. Yes sir.

Q. Have you ever exhausted your homestead right?

A. No sir.

Q. Your intention is to take this land as a homestead?

A. Yes sir.

Q. And has been ever since 1884?

A. Yes sir.

Q. Have you ever been disturbed in the possession of the land?

A. Well, when Mr. Pasco got the contract from the railroad company in 1887 he undertook to sow, and I stopped him, I went away in the afternoon, and he went on and planted that piece. When I came back I sowed it myself.

Q. Have you been further disturbed in the possession of it?

A. Mr. Pasco rented it to Charles Dougherty in 1888 or 1889.

Q. What was done that year?

A. They sowed it to wheat; I ordered them not to sow it; I told them if they put it in I should cultivate it, and I cultivated it.

Q. You have harvested the crops up until 1893?

A. Yes sir.

Q. During the years 1894 and 1895 you allowed other people to use it or leased it to them?

A. Yes sir.

Q. Have you a crop there this year?

A. Yes sir.

Q. You put it in there yourself?

A. Yes sir or hired it done.

Q. Did you make application on this land on the 27th of February 1896?

A. I sent in papers, Mr. Perkins made out the papers and I told him I had filed on it, and that my application had been rejected, and I wanted to know what to do, and he made out the papers and he had them signed and sent them in and had it published in the Sheldon Eagle.

Q. Who is Mr. Perkins?

A. He is a lawyer at Sheldon, Iowa.

Q. You went to him and asked what you should do in regard to it?

A. Yes sir.

Q. He told you he would do everything necessary to protect your rights in the land?

A. Yes sir.

Q. And he told you what you would have to do?

A. Yes sir.

Q. That it would not be necessary for you to do anything further in the way of filing on the land?

A. Yes sir, he said that was all I had to do, was to sign those papers and have them published.

272 Q. And you acted under his advice as a lawyer?

A. Yes sir, I expected him to be down here to attend to it; but since I have come down here I understand that he is an attorney [from] Sioux City & St. Paul Railroad Company.

Q. When did you employ Mr. Perkins.

A. I cannot tell just the time.

Q. About what time?

A. I think it was in December, or January last.

Q. December 1895, or January 1896?

A. Yes sir.

Q. Some question was made here as to your sitting as a Juror relative to this land; just state what that case was about.

A. Mr. Pasco had a contract with the railroad, and broke out about 60 acres; Charles Dougherty claimed the land and he rented to his father, as I understood it, and they had a law suit over the crops on this land.

Q. And you sat as a juror did you in that case?

A. Yes sir.

Q. Was the question asked of you as to whether you had any interest in this land?

A. No sir.

Q. Did you understand that the title to this land was being determined right there?

A. No sir.

Q. Now, you may state the condition of affairs up there in that country from 1884 for several years after that as to whether or not people were unsettled in their settlements on the land. That is were they being put off of the land?

A. They were.

Q. Why did you not make a settlement on the land?

A. Because I did not want to have a lawsuit, or have any trouble I had not the money.

Q. Why did you not put off the parties that were on there?

A. Because I had not the money to spend.

Q. You did, however, warn several parties off at first?

A. Yes sir.

Q. And then told the people that you expected to have the land if it went back to the Government?

A. Yes sir.

Q. You make claim now for that land?

A. Yes sir.

Cross-examination by Mr. LOWERY:

Q. You never lived on this tract of land, did you?

A. No sir.

Q. You did nothing except to plow this strip of three or four acres and cultivate it.

A. That is all.

Mr. LOWERY: We move to strike out the evidence as incompetent and immaterial, and does not establish any right, title or interest in and to the land under the homestead laws.

273 Cross-examination by Mr. JEWETT:

Q. How long have you been living in that vicinity.

A. Since 1871.

Q. On what tract of land were you living?

A. On the southeast quarter of Section 4; I pre-empted it in 1871.

Q. You [provided] up and got your title, did you?

A. Yes sir.

Q. In 1875 or 1876 you broke this fire break on the strip opposite your place on this quarter.

A. In 1875 or 1876 I broke a fire break eight or ten furrows wide, so that the fire would not burn me out.

Q. That was the general custom at that time, was it not?

A. Yes sir.

Q. For parties to protect their farm buildings by such fire breaking?

A. Yes sir it was;

Q. Is this piece of land fenced?

A. Not unless it has been fenced since I have been down that way.

Q. How much land is there in the piece you have been claiming these last five or six years?

A. Something over a half an acre; as near as I can judge; it is about forty two rods long; I have sowed it several times with an eight foot seeder; and a round and a half would not quite finish it.

Q. What is there to show where the half acre strip ends and the other land begins?

A. Nothing that I know of.

Q. It has all been plowed land?

A. Yes sir.

Q. No stakes, stones or monuments set in there to indicate where it is.

A. No sir, not that I know of.

Q. And never has been?

A. No sir.

Q. You knew of Mr. Pasco's purchase of the land?

A. Yes sir.

Q. And of his continued use and occupancy of the quarter section.

A. Yes sir.

Q. And of the sale to Mr. Patterson.

[Q.] Yes sir; I have understood that he sold it to Paterson.

Q. Did you not know at the time you claim to have leased the land to Mr. Beacom that Mr. Beacom was holding a lease from Mr. Patterson of the quarter section excepting the school acre?

A. I did not.

274 Q. You knew he was renting the land?

A. He told me that he was going to plant corn there, and that he did not want to turn round.

Q. Has he ever paid you any rent?

A. He has not yet.

Q. Then, for the years which you have stated you rented it to him the crop, whatever there was, was taken from that land with all the rest and taken possession of by Mr. Beacom?

A. I do not know as to that.

Q. You do not get any of that?

A. No sir, not yet; he told me last Thursday to come down and get some corn.

Q. What share of the rent did he agree to give you?

A. We did not make any agreement as to that.

Q. There was no agreement as to what you were to have out of the crop for the rent?

A. No sir; He said he would like to rent it; and I told him I would let him put it on.

Q. There were no writings, and he was to pay you what it was worth?

A. Yes sir.

Q. You did not agree upon any price?

A. Last winter he wanted to rent it for cash, and I told him I would do that.

Q. That was the end of the year after the crop was off?

A. Yes sir; I asked him if he had his corn cut, and he said he had not; I told him I would like to have my rent; and he said if after he got through with Mr. Conrad, if he had anything left why he would pay it.

Q. He never has paid it yet?

A. No sir; last Thursday he told me to come out there and get the corn.

Mr. STEARNS: You never built a house, nor lived on this land?

A. No sir.

Q. All you did was to do the breaking on there?

A. Yes sir, and cropping it; I did not think it was necessary for a man to build a house on a homestead; that is the reason I did not build one.

Mr. JEWETT: You knew all this time did you not, that it was claimed as railroad land?

A. Yes sir; but it was talked that it was going back to the Government, that they had more land than they were entitled to.

Mr. STEARNS: You never offered any filing on this land?

A. No sir.

Mr. JEWETT: When did you first hear that there was any question about the title?

275 A. About 1880.

Q. When you first went up there in 1875 or 1876 and put this fire break on it, there was no question about the title at that time?

A. I had not heard of any at that time?

Q. It was only some years afterwards that you made up your mind that you would try and homestead it?

A. Yes sir.

Q. You had no such intention when you put the firebreak on it?

A. No sir.

Mr. GRIFFITHS: The fact that the railroad company was said not to have earned these lands was common report throughout that country?

A. Yes sir.

Q. And in the newspapers?

A. Yes sir.

Q. It was the common talk?

A. Yes sir.

Q. The people knew of this Squatters' Union?

A. Yes sir.

Mr. JEWETT: What years do you refer to when this report was that it was known to be forfeited land?

A. Along in 1880 or 1881 or 1882; somewheres along there; I cannot tell exactly.

Q. You heard did you not, that the two railroad companies were having litigation over it?

A. Yes sir.

Q. And you knew when the suit was decided between the two companies?

A. Yes sir, I heard of it.

Q. And that this section was set off to the Sioux City Company?

A. Yes sir.

Q. Did you ever try to buy it?

A. No sir, I did not.

Mr. GRIFFITHS: Why did you not try to buy it of the company?

A. Because I did not think they had any title to it.

Mr. JEWETT: Did you ever look it up to see whether they had any title to it?

A. No sir, I did not.

Q. You never had any intention of buying it?

A. No sir.

Mr. GRIFFITHS: But you did intend to make a homestead of it?

A. Yes sir.

(Witness excused.)

Mr. LOWERY: We move to strike out all the evidence of this wit-

ness because it is incompetent, irrelevant and immaterial; it does not establish any right to enter the land under the homestead laws.

Mr. JEWETT: Same motion on our part.

HARRY HUNTSLEY, called as a witness in behalf of the applicant A. B. Bloom, examined in chief by Mr. GRIFFITHS, testified, as follows:

276 Q. State your age?

A. I am 37 years old.

Q. Where do you live?

A. In Gilman Township.

Q. In what county?

A. Osceola County.

Q. Do you know of the land in controversy here?

A. Yes sir.

Q. How long have you known of it?

A. I have known the land about 12 or 13 years.

Q. Do you know A. B. Bloom?

A. Yes sir.

Q. Do you know of his having any interest in the land or making any claim to it?

A. Yes sir, I knew he has claimed it; that is, that strip that he had broken.

Q. How long have you known of that strip, being broken out by him?

A. 8 or 9 years.

Q. Do you know of his having cropped that land since then?

A. I could not say as to his cropping it all the time; there was three years that I lived near Sibley.

Q. At what time did you move to Sibley?

A. About 1879 I went there.

Q. And you had known the land for how long before that?

A. I came up there thirteen years ago this spring just a mile from where we live.

Q. You knew of his cropping it from about 1884 up to the time you left the city?

A. Yes sir.

Q. Then he cropped it after you came back?

A. I heard that he did.

Q. You understand that he was cropping it right along?

Mr. JEWETT: Objected to as hearsay.

A. Yes sir.

Q. Did you ever go on this land to do any breaking?

A. Yes sir.

Q. From whom?

A. For a man by the name of James Stevenson.

Q. When?

A. Either in 1883 or 1884, in 1884 I think.

Q. Were you allowed to go on with your breaking?

A. No sir, Mr. Bloom came out there and told us that he had

broken out some, and was going to homestead it. Some parties told us if we did break it out we would get no pay; and Mr. Bloom also told us that; he had a little patch there that year with potatoes in.

Q. You are no relation to Mr. Bloom?

A. No sir.

Q. You have no interest in his claim?

A. No sir.

Mr. LOWERY: He has never lived on that land?

A. No sir.

Q. Nor put any building on it?

A. No sir.

277 Mr. LOWERY: We move to strike that out.

Mr. JEWETT: When was that?

A. I think it was in 1884.

Q. What time of year?

A. I think it was about the middle of June.

Q. Mr. Bloom told you, did he, that if you broke this land for Mr. Stevenson you would likely not get your pay for it?

A. Yes sir, two or three others also told us that.

Q. That was one of the reasons why you stopped breaking there, was it not?

A. Yes sir.

Q. Was not that the principal reason?

A. Yes sir.

Mr. GRIFFITHS: Mr. Bloom told you at the time he did not want you to break there?

A. Yes sir.

Q. That he intended to homestead the land?

A. Yes sir.

Mr. JEWETT: Was there anyone else with you to do the breaking for Mr. Stevenson?

A. Yes sir.

Q. Who was it?

A. My brother-in-law, Edwin Beckwith.

Q. Was he present at the time you had the conversation with Mr. Bloom?

A. Yes sir, he was.

Q. And he heard Mr. Bloom tell you with reference to Stevenson's probability of not paying you for the breaking?

A. Yes sir.

Q. And as a result of that you concluded not to go on and do the breaking?

A. Yes sir.

(Witness excused.)

Mr. LOWERY: I move to strike out the evidence of the witness because it is incompetent and immaterial, and does not tend to establish any fact which gives the claimant Bloom any right to enter the land under the homestead laws.

Mr. GRIFFITHS: In connection with the testimony offered in behalf of applicant Bloom, we offer in evidence the records and dockets and all filings made by A. B. Bloom in connection with this land; and now ask that his claim be established, if possible, under the act of March 3d, 1887. But if it be held that he cannot take under said act of March 3d, 1887, that he be allowed to enter this land as a homestead, and that his claim therefor be declared the first and only valid legal claim with application to enter the same, and that the Receiver's receipt issue to him, and that he be permitted to take the same as a homestead.

278 **I** again tender the sum of \$18 fees and commissions due this office, and such further sum as may be necessary to defray the expenses of taking and transcribing the testimony in this case.

REGISTER: The tender at this time is refused, and the ruling on the application is reserved.

Mr. LOWERY: The attorney for Louis Hoffman, homestead applicant, moves to strike out the testimony and dismiss the claim of Abraham B. Bloom, for the reason that the application filed by him to enter the land in 1895, on the 3d day of November, having been appealed from the rejection was dismissed by the Commissioner of the General Land Office, and the application to make proof under the act of March 3d, 1887, filed in the United States Land Office on the 17th day of January 1896, was without authority of law and conferred no right on said applicant; that his subsequent application filed is junior and inferior to the application of Louis Hoffman, filed on the 27th day of February 1896.

LOUIS HOFFMAN, called as a witness in his own behalf, examined in chief by **Mr. Lowery**, testified as follows:

Q. State your name, age, occupation and post office address.

A. Louis Hoffman, age, 28, occupation, farming; post office address Des Moines, Iowa.

Q. Are you the Louis Hoffman who on the 27th day of February made application to enter the southwest quarter of Section 3, Township 97, Range 42, O'Brien County, Iowa?

A. Yes sir.

Q. Where were you born?

A. In Germany.

Q. How long have you been in the United States?

A. I came in in 1883.

Q. Are you a naturalized citizen of the United States?

A. Yes sir.

Q. Are these your naturalization papers?

A. Yes sir.

Q. When were you naturalized?

A. I forget the year.

Q. Where?

A. Here in Des Moines.

Mr. LOWERY: We now offer in evidence the certificate of natu-

ralization of Louis Hoffman, which show- that on the first day of November, 1892, he was naturalized before, or by Judge C. P. Holmes, Judge of the District Court of Polk County, Iowa; and we ask to be permitted to file a certified copy of this naturalization paper.

Mr. JEWETT: Objected to as irrelevant and immaterial; no objection.

279 Mr. LOWERY: We offer in further support of the claim the homestead application filed on the 27th day of February at 9 o'clock and six and one-half minutes and his affidavit of qualification, and also refer to the acts of Congress approved May 12, 1864, granting to the State of Iowa, the land in controversy, and also the acts of the 19 General Assembly approved March 16, 1882, wherein the State of Iowa resumed all right and title to the land in controversy, and the decision of the Supreme Court of the United States rendered on the 21st day of October 1895, wherein all right to the land in controversy was decreed from the Sioux City & St. Paul Railroad Company, and the land at that time became subject to disposition by the General Government of the United States only under the homestead laws. And we tender the sum of \$18.00 commissions and fees of the Register and Receiver for entering the land, and ask that a receipt be issued to the applicant and that all claims of the homestead applicant- James Beacom, Grant Lyle and Abraham B. Bloom, be declared junior and inferior to the application of this claimant; and that they be dismissed.

REGISTER: The tender is at this time refused, and ruling on the application reserved.

Cross-examination by Mr. JEWETT:

Q. Have you ever seen this land?

A. Yes sir.

Q. When?

A. In April 1896.

Q. Did you attempt to live on it?

A. No sir.

Examination by Mr. STEARNS:

Q. Was that the first time you ever saw that land?

A. Yes sir, the 4th of April 1896.

Mr. CONRAD: Did you see this man out there farming?

A. No sir.

Q. Were you not with Frank Frisbie out there?

A. No sir, I did not see him out there.

(Witness excused.)

Mr. CONRAD: The homestead applicant, James A. Beacom moves to dismiss the application of the homestead claimants of record in this case, for the reason that their claim was junior to the claim of the homestead applicant James A. Beacom.

Mr. STEARNS: Same motion on the part of Roscoe Lyle.

280 Mr. JEWETT: The attorney for applicant, C. W. Patterson moves that each and every of the homestead applications for the land involved be rejected on the ground that said tract was not at the date of either of said applications subject to homestead entry. And, as to the applications of Roscoe Lyle, A. B. Bloom, and James A. Beacom, that each of said applicants had lived in the vicinity of said land for many years then long past, well knew the facts of the purchase of said land by Pasco from the railroad company, and the sale by him to this applicant Patterson, and well knew the continued use and occupation of said land by said parties during all of said years.

I further move that all evidence offered in support of each and every of said homestead applicants be stricken out, and that [that] the final proof of said applicant Patterson be accepted as hereinbefore offered.

REGISTER: Ruling reserved.

Mr. GRIFFITHS: On behalf of the claimants, we object to the testimony offered on the part of the protestant Louis Hoffman, for the reason that the same is incompetent, immaterial and irrelevant, and move to strike the testimony on these grounds, and ask that his application be dismissed.

(Testimony closed.)

I, Thomas J. Prosser, Contest Clerk of the United States Land Office at Des Moines Iowa, do hereby certify that the foregoing is a true and correct transcript of the evidence of the following witnesses; George W. Patterson; Mrs. G. W. Roth; E. Beckwith; James A. Beacom; John Sullivan; Charles Dougherty; Roscoe Lyle; N. Bloes; James Cutsinger; William Lyle; A. B. Bloom; Harry Huntsley and Louis Hoffman, and that they were each duly sworn; and the record evidence offered in this case; and that I took the same down in shorthand, as it was given, and transcribed the same.

Signed this 19th day of May 1896.

THOMAS J. PROSSER,
Contest Clerk.

281

EXHIBIT No. 33.

"F."

13-127030.

W. K. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., August 28, 1899.

LOUIS HOFFMAN, ROSCOE LYLE, ABRAHAM BLOOM, JAMES A.
BEACOM

vs.

GEORGE W. PATTERSON.

S. W. $\frac{1}{4}$ Sec. 3, T. 97, R. 42, O'Brien County Lands.

Register and Receiver, Des Moines, Iowa.

SIRS: I have examined and considered the record in the case of Louis Hoffman et al., vs. George W. Patterson, received with your letter of August 7, 1897.

This tract is one of those patented to the State of Iowa under act of May 12, 1864; for the benefit of the Sioux City & St. Paul Railroad Company, but whose patent was vacated and title decreed in the Government under decision of the Supreme Court rendered October 21, 1895, (159 U. S. 349) in a suit instituted by the United States against the Company to recover title to said land.

Under instructions issued to you under date of November 18, 1895, for the restoration of said land to entry, your office published notice that the land would be open to entry February 27, 1896, and that all persons claiming rights, under the Act of March 3, 1887 should publish notice prior to that date that they would submit proof thereof on a day to be therein set.

In compliance with this requirement, George W. Patterson filed notice to make proof May 12, 1896, of his claim under act of March 3, 1887, as a purchaser from the railroad company of the S.W. $\frac{1}{4}$ Sec. 3 T. 97 R. 42, "except one acre in southwest corner for schoolhouse."

The district township of Floyd School Board filed Notice to make proof April 7, 1896, of its claim under said act as a purchaser from the railroad company to one acre in S. W. $\frac{1}{4}$ said Sec. 3.

James A. Beacom filed notice under said act to prove his claim to said tract of land, but not as a purchaser from the railroad company.

282 May 12, 1896, he filed homestead application for the tract alleging settlement October 22, 1895.

Abraham B. Bloom and Roscoe Lyle also gave a notice of intention to make proof under said act, but neither of them claim as purchasers from the company, and May 12, 1896, Bloom filed homestead entry and March 23, 1896, Roscoe Lyle filed homestead entry for the land alleging settlement October 22, 1895.

February 27, 1896, the day of opening Louis Hoffman filed his

homestead application for the tract but does not allege any prior settlement or improvement.

You report applications as having been filed by a number of other persons, all of whom defaulted at the hearing, and whose applications were therefore rejected. No appeals from this action having been taken by any of the parties, the same has become final and their cases are closed and their applications will be further considered.

Hearing was held May 12, 1896. There were present,—

George W. Patterson with his attorney- W. P. Jewett and C. M. Barrett.

The School Board by its attorney W. P. Jewett.

James A. Beacom, by his attorney J. F. Conrad.

A. B. Bloom, with his attorney H. H. Griffiths.

Louis Hoffman, with his attorney A. P. Lowery.

Roscoe Lyle with his attorney- King & Stearns.

Testimony.

The testimony on behalf of Patterson is to the effect that June 21, 1887, J. H. Pasco purchased under contract with the Sioux City & St. Paul Railroad Company "the southwest quarter less one acre as described in deed A. 137 in southwest corner" of Section 3, T. 97, R. 42, containing 159 acres that he broke and cultivated the land until 1889; that July 17, 1889, he assigned the contract to A. and G. W. Patterson for consideration of \$800. That A. Patterson was his father who died in October, 1893; and he succeeded to all his rights; that he, George Patterson, April 25, 1895, entered into a modified contract with the company whereby he agreed in general terms that in the event of a decision of the United States Supreme Court adverse to the railroad company he would surrender the original agreement and this modification thereof to the company and receive therefor the amount, with interest, which has been paid on said agreement

283 on account of principal and interest; that he has cultivated all of said lands by tenants to current years; has paid all taxes and \$714 of the principal and interest on deferred payments; and that there was no question in his mind as to the company's title prior to the decision of Judge Shiras (which was the decision of the United States Circuit Court rendered October 20, 1890) and did not know the Governor had refused to patent this land to the Company.

In behalf of Beacom the evidence is that he settled upon the land October 22, 1895, and took up his residence thereon in a shanty which Pasco had built on the tract, and resided there about 5 months when one day in March, 1896, while absent, Patterson hauled it off, claiming it was his, acquired under purchase of contract from Pasco; that he, Beacom, put up another house about two days later, on same spot, and has occupied it ever since and is now living in it, and has the whole tract in crop.

He also states that he made a homestead entry in 1893 in N. W. ¼ Sec. 35, T. 157, R. 42, Devil's Lake District, North Dakota, but he abandoned the land. The records of this office show that May 26, 1893, James A. Beacom made homestead entry 5056 Devil's

Lake District North Dakota, for said N. W. $\frac{1}{4}$ Sec. 35, T. 157, R. 42, and that the same was canceled November 13, 1896, in contest proceedings wherein Beacom made default, the evidence showing he had not resided upon or improved the land.

On behalf of Lyle it is shown that he was upon the tract about seven o'clock of the evening of the 22nd of October in a wagon and staid there all night, and that in the morning of the 23rd he hauled on a house which he had purchased from his father, and staid there that day and night. He asserts also that he commenced plowing that day but Beacom told him to stop and threatened him with a pistol; that on the 24th day while he was off the land his house was moved off into the road by several men; that he went over to move it back but was told by them that if he did so they would split it to pieces, so he left it stand in the road; (It does not appear, however, that Beacom took any part in this proceeding or authorized it),—and the house remained there until the 20th of March, when he moved it back and lived there until the 13th of April, that when he moved it back Beacom sued him and obtained judgment against him April 11, and the house was pulled off into the road by the Sheriff, where it still remains.

On behalf of Bloom the testimony is to the effect that he was a resident upon the S. E. $\frac{1}{4}$ Sec. 4 which he owned and which adjoins the land in dispute, and that he broke a few furrows on 284 the disputed track in 1875 and 1876 to serve as a fire-break, that in 1884 he widened the breaking, which comprises in all about a half acre of ground, and planted potatoes in it; that he has cultivated this half acre every year since but has never resided on the tract or put any other or further improvements on it,—did nothing except to plow and cultivate this half acre of ground.

For the School Board, it is shown that the Board purchased and obtained title by warranty deed, from the company executed June 22, 1887; one acre of this quarter section described in the deed as follows:

"Commencing at a point fifty (50) links east and fifty (50) links north of the southwest corner of Section Three (3) in Township Ninety seven (97) North of Range Forty Two (42) West of the fifth principal meridian; thence north three chains and sixteen and one fourths links (3 ch. $16\frac{1}{4}$ l.); thence east three chains sixteen and one fourth links (3 ch. $16\frac{1}{4}$ l.); thence south three chains, sixteen and one fourth links (3 ch. $16\frac{1}{4}$ l.); to a place of beginning containing one acre"; that subsequently a school house was erected thereon and now exists there.

In behalf of Hoffman he testifies that he is a naturalized citizen of the United States and his certificate of naturalization appears to have been offered in evidence showing he was naturalized November 1st, 1892, in district Court of Polk County, Iowa, but neither the certificate nor a certified copy accompanies the record; he also testifies he first saw the land in April, 1896.

Upon this evidence you decide April 21, 1897,—

1st. That Patterson had such knowledge of the condition of the title of the company that his purchase does not bear the elements of

good faith contemplated by the fourth section of the act of March 3, 1887.

2nd. That while Beacom's settlement would give him the preference right of entry, yet he had exhausted his homestead rights by his prior entry made in Devil's Lake District North Dakota.

3rd. That Lyle submits no evidence to support claim under Act 1887.

4th. That Bloom never resided on the land and fails to substantiate his claim under said Act.

5th. That on February 27, 1896, no person had a legal valid claim to the land, and that Louis Hoffman filed the first legal application for the tract.

285 You therefore reject the applications of Patterson, Beacom, Lyle & Bloom, and approve the application of Hoffman.

Appeals have been filed by Patterson, Beacom and Lyle.

Following the filing of said appeals, Beacom submitted affidavits and motion for re-hearing on the ground that your office disregarded and ignored the circular instructions of March 23, 1895, under Act of December 29, 1894, amendatory of the third section Act March 2, 1889.

He makes affidavit that he made homestead entry as stated in his evidence, but that he never resided on said land and never made any improvements on it because at the time he made the entry he paid every cent he had in the world for filing fees in the land office, and then owed the Notary who made out the papers a part of his fee; that he intended to go to work and earn money to improve said land and establish his home thereon, but could get no work and was obliged a part of the time to work for his board; that in that season of 1893, there was hot winds in North Dakota, which destroyed the crops and no work could be had; that he made every effort to make money to improve said land and establish his residence there, but on account of his being unable to get work and his poverty, he was unable to do so; and not making the required improvements and residence the land was taken from [his] by contest.

He also states in his motion that owing to the conditions and facts set out in said affidavit it was not possible for him to retain the land and comply with the laws of the land department and he so stated to the Register and Receiver of the Local land office at Devil Lake, and was told by these officers that under the facts and circumstances he had not lost his rights to make a second homestead entry, and relying on said statements he made his settlements and tendered his filing on the land in the present case, relying implicitly on the statements made to him by the district officers at Devil's Lake, he did not come prepared and did not put in his testimony as fully as he otherwise would have done.

He therefore requested that your decision be set aside and the case opened for further hearing in order that he may put in his evidence as set forth in his affidavit.

Upon this petition you set aside your decision and ordered a new trial to be held September 14, 1897.

286 Whereupon Patterson moved for a writ of certiorari to bring up the record from your office under your decision on the merits of the case.

And under date of July 28, 1897 the Department ruled that your office had no jurisdiction of the case after decision was rendered by you and appeals taken, and had no authority to issue the order for re-hearing.

You were therefore directed by my letter of August 4, 1897 to forward the record in the case and which I have now considered.

Decision.

It is only necessary to say with respect to the claim of Patterson, as assignee of Pasco, the purchaser from the company, that the modified contract entered into by him with the company is in the same terms as the one made with the company by Ole Olson, in the case of Olson vs. Traver et al. (26 L. D. 350) and which the Department therein held was fatal to his claim as a purchaser.

Under that decision the claim of Patterson is eliminated from the case and for this reason I affirm your decision rejecting his application and claim.

Bloom never made a settlement on the land and his only connection therewith has been the cultivation of about half an acre, and he has taken no appeal from your decision adverse to him. Said decision is therefore final and his case is closed.

Hoffman claims no rights by way of prior settlement and rests upon his application to make entry filed February 27, 1896; his rights are therefore subordinate to those of Beacom and Lyle, both of whom made settlement after the land became subject thereto, and prior to the day it became subject to entry.

When however Lyle went on the land it was already in possession of Beacom, he having gone on and taken up his residence early in the day of the 22nd of October, while Lyle did not go on until about seven o'clock in the evening of that day and put on his house in the morning of the 23rd; this house was moved off on the 24th of October by some men and upon an attempt to replace it he was threatened with its destruction if he did so. Beacom, however, does not appear as having taken any personal part in this affair, but Lyle asserts Beacom threatened him with a pistol when he commenced plowing on the 23rd.

287 About March 20th, however he again moved his house on, and on March 23rd filed his homestead application; but suit was then brought against him by Beacom for possession, which was decided in the latter's favor, and under said decision the Sheriff removed his house from the land April 13th and the law has since stood between him and Beacom but he resided there from 20th March to the removal of April 13th.

It would be inequitable and unjust to permit the absence prior to February 27th, 1896, virtually by duress, to defeat his claim against Hoffman, who was always been a stranger to the land in the matter of any settlement or improvement.

I must therefore, overrule your decision in favor of Hoffman and reject his application.

Now as to Beacom there is no doubt that he went upon the land and commenced settlement before Lyle and he has since continued to live there, first in a house then on the land and then in one built by himself; he also has the whole tract in crops and the only question as to his superior right is as to his right to make a second homestead entry, he having previously made an entry which however he says he abandoned but does not say why.

Upon the record therefore as it stands your decision adverse to him would be correct.

Beacom appealed from said decision, but on May 29, 1897 within the time allowed by the rules he submitted motion and affidavit for a rehearing as above set out and directly thereafter withdrew his appeal.

This motion you entertained and ordered new hearing which was ordered overruled by the Secretary.

The Motion therefore now comes before me to determine whether the same should be granted.

Beacom claims the right to make a second entry by virtue of the Act of December 29, 1894, (28 Stat. 599—General Circular of 1896 page 219).

This Act—as amendatory of the third section Act March 2, 1889 (25 Stat., 854, General Circular 1895, page 171) and permits any settler who has theretofore forfeited his entry for any of the reasons stated in said third section, to make another entry under the homestead law.

The reasons given in the said third section are total or partial destruction or failure of crops, sickness or other unavoidable casualty."

288 The Department has ruled that this act is "beneficial and remedial and should not be narrowed by a strained construction," (*Hertzke vs. Henermond*, 25 L. D. 82) and of course the amendatory act is equally remedial.

In *Charles A. Garrison* (22 L. D. 178) it is held that (Syllabus) "The right to make a second homestead entry may be recognized where the first was canceled on account of the entryman's failure to establish residence and such failure was due to circumstances beyond his control.

In that case special reference is made to the case of *James M. Frost et al.* (18 L. D. 145) wherein Frost was allowed to abandon his first entry and make another where an adverse entry had intervened.

In *Patrick H. Guthrey* (26 L. D. 549) it is ruled that (Syllabus) "The right to make a second homestead entry under the Act of December 29, 1894, will not be defeated by the fact that the entryman sold the improvements on the land covered by his first entry and relinquished his claim thereto where it appears that on account of a protracted drouth such action was made necessary to secure the means of subsistence."

It was such drought and poverty that Beasom asserts forced him to abandon his claim.

In case of Charles Walters, 8' L. D. 131, quoted in James M. Frost et al. (*supra*) the Department says;

"The rule which limits to one homestead entry is based upon a view of the Statute which I follow only because it has been long maintained in the Department and Land Office and has some public considerations in support of the general policy; but it has been repeatedly engrafted with exceptions where justice required exceptions."

Under the construction of the law as above exemplified, I am of opinion that the circumstances alleged by him surrounding his first entry under which he relinquished or abandoned it are sufficient to give him the right to a second entry and the only question is shall he be accorded a re-hearing in the present case to prove the facts.

As this decision runs, this hearing would be solely between him and Lyle.

The evidence it is proposed to submit is not newly discovered, nor is it such that might not have been produced at the trial; but Beacom states that he relied upon the answer of the district officers

when he informed them he could not comply with the law, 289 that under the facts and circumstances he had not lost his right to make a homestead entry and relying thereon he made his present settlement and application to enter and did not put in his testimony as fully as he otherwise would have done; in other words, that he was ignorant of the necessity to show why he had abandoned that land.

Beacom was the first actual settler on the land in dispute and has complied with the requirements of the statutes; in that respect his claim is bona fide and he is entitled to every equitable consideration and those point unmistakably to the granting of a hearing to him to show why he is entitled to the benefit of the law of 1894; in other words, the circumstances under which he gave up his former entry.

Should this decision become final such hearing will be accorded him, of which due notice will be given Lyle.

Finally, as to the School Board, I am of opinion that the purchase made by it of the one acre for school purposes was made in good faith and that it is entitled to enter said tract under the fourth section of the Act of 1887.

In the description of boundaries in the copy of the deed filed, that of the west boundary does not appear; this defect must be cured before final entry is made.

Notify all parties in interest of this decision, allowing usual time for appeal.

Mr. Patterson will, be informed hereof by this office through his resident counsel.

The NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of the tract is claimed as swamp which you will dispose of under circular of December 13, 1886 5 L. D. 279, before any entry is allowed.

Very respectfully,

W. A. RICHARDS,
Acting Commissioner.

W. W. G.

EXHIBIT 34.

Vol. 27.
No. 695.
W. V. D.

DEPARTMENT OF THE INTERIOR,

F. C. D.
F. L. C.
F. W. C.

WASHINGTON, D. C., April 21, 1900.

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LOUIS HOFFMAN, ROSCOE LYLE, et al.

VS.

GEORGE W. PATTERSON.

Sec. 4, Act of March 3, 1887 (24 Stat. 556), O'Brien County Lands."

To the Commissioner of the General Land Office.

SIR: George W. Patterson, Roscoe Lyle and Louis Hoffman have filed separate appeals from the decision of your office dated August 28, 1899, in the case of Louis Hoffman, Roscoe Lyle, et al., vs. George W. Patterson, involving the SW $\frac{1}{4}$ Sec. 3, T. 97, N., R. 42, W., Des Moines, Iowa, land district, which is a part of the O'Brien County lands involved in the suit of the Sioux City & St. Paul Railroad Company vs. United States, wherein a decision was rendered by the Supreme Court of the United States, dated October 21, 1895, (159 U. S. 349) quieting title in the United States.

Your office decision denies the application of George W. Patterson for confirmatory patent under section 4, of the act of March 3, 1887, (24 Stat. 556) for the land applied for by him, being the SW $\frac{1}{4}$, Sec. 3, T. 97 N., R. 42 W., "except one acre in the south west for a school house"; awarded the District Township of Floyd School Board a right to confirmatory patent under said act of March 3, 1887, for the land embraced in its application, being one acre situated in the southwest corner of said southwest quarter of Section 3), (being particularly described in a deed from the Sioux City & St. Paul Railroad to said District Township of Floyd School Board.

Said decision also denied the homestead application of Louis Hoffman and Roscoe Lyle, for said land, and held that in the event of your office decision becoming final, James A. Beacom, who is found to be the first actual settler on the land and who filed homestead application for the land in controversy, alleging settlement October 22, 1895, (which homestead application was an application to make a second homestead entry by virtue of the act of December 29, 1894) (28 Stat. 599) would be granted a hearing to show why he is entitled to the benefit of the said act of December 29, 1894 supra.

The record history and the facts in the case, upon examination of the record, are found to be substantially as stated in the decision of your office and need not be now recited.

The action of your office denying the application of Patterson for confirmatory patent under section 4 of the act of March 3, 1887, supra, was based upon the ground that Patterson had subsequently

to his purchase of the said land by assignment from one J. H. Pasco, who entered into a contract with the Sioux City & St. Paul Railroad Company for the land in controversy on June 21, 1887, entered into and made a modified agreement with the said railroad company such as was involved in the case of Olson vs. Traver (26 L. D. 350) and had thereby abrogated his rights under his purchase.

While this holding was in harmony with the decision in the said case of Olson vs. Traver, this Department in the case of Burton et al vs. Dockendorf (29 L. D. 479) held that such a supplemental contract as was involved in said case of Olson vs. Traver, *supra*, did not defeat the right of a purchaser of land from a railroad company to confirmatory patent under Section 4 act of March 3, 1887, *supra*, where such contract had not been enforced.

For the reasons given in said case of Burton et al. vs. Dockendorf, the action of your office denying the application of Patterson for a confirmatory patent to the land applied for by him is reversed and Patterson's said application will be allowed.

The action of your office approving the application of the District Township of Floyd School Board for the land embraced in its application is hereby affirmed.

The respective homestead applications of Hoffman, Lyle, and Beacom are hereby rejected.

Other homestead applications were filed for the land in controversy by the several parties mentioned in the decision of your office, but as the said parties have failed to continue to prosecute their respective applications no further consideration need be given them herein and they stand rejected.

The direction of your office as to the swamp claim of the State of Iowa for the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Sec. 3, T. 97, N., R. 42 W., is, under the decision of this

Department in the case of Genevey vs. Georgen et al. (29 292 L. D. 321) rendered unnecessary and will not be followed in the disposal of this case.

Herewith are returned the papers.

Very respectfully,

E. A. HITCHCOCK,
Secretary.

Endorsed: No. 210 Equity. Roscoe Lyle, Plaintiff vs. George W. Patterson, et al. defendants; Louis Hoffman, Intervenor; Stipulation and Agreed Statement of Fact. Filed Sept. 12, 1907. A. J. Van Duzee, Clerk. By J. H. Bolton, Deputy.

And on the 1st day of April 1908 there was filed in the office of the Clerk of said Court in this cause an Opinion by the Court which is in words and figures following, to-wit:

United States Circuit Court, Northern District of Iowa, Western Division.

No. 210. Equity.

ROSCOE LYLE, Complainant,

VS.

GEORGE W. PATTERSON, THOMAS BEACOM et al., Defendants,
and LOUIS HOFFMAN, Intervenor.

On Final Hearing.

M. B. Davis, and Henderson and Fribourg, for complainant.
W. D. Boies, for defendants.

REED, District Judge:

This suit was commenced May 24, 1901, to require the defendant Thomas Beacom to convey to complainant the legal title to the S W $\frac{1}{4}$ of Sec. No. 3, Twp. 97, R. 42, in O'Brien County this state (except one acre in a corner thereof used as a schoolhouse site) which it is alleged said defendant holds in trust for complainant. The land is a part of that granted by the Act of Congress approved May 12, 1864, to the state of Iowa to aid in the construction of two railroads in that state, was subsequently patented to the state for the benefit of the Sioux City & St. Paul Railroad Company but never patented by the state to that company, because of its failure to construct the road.

From the evidence it appears that on June 21st 1887, J. H. Pasco made a contract with the railroad company for its purchase at the agreed price of \$2,146.50 its then full value. He paid a part in cash and agreed to pay the remainder in ten annual installments. Pasco at once took possession, broke the land and cultivated it until

July 17th, 1889, when he assigned his contract of purchase
293 and delivered possession of the land to the defendant G. W.

Patterson, and his father A. Patterson in consideration of the payment by them to him of \$800, they in addition to pay the amount due the railroad company upon the contract of purchase. A. Patterson subsequently died, and G. W. Patterson succeeded to his interest in the contract and land. July 17, 1889, the defendant G. W. Patterson leased the land to a tenant who occupied and cultivated the same under the lease until January 30, 1901, when Patterson sold and conveyed the land by warranty deed to the defendants T. H. and Wm. H. Smith for \$6,360, its full value which deed was duly recorded in the proper records in O'Brien County January 31, 1901, and they on March 31, 1901 in good faith sold and conveyed the land by warranty deed to defendant Thomas Beacom for \$6,600. The Smiths and defendant Beacom took immediate possession of the land on their respective purchases of the same.

After the land was restored to public entry under the order on the Land Department of November 18, 1895, (see Harvey vs. Holles

just decided) and notice thereof by the local land office, the defendant Patterson on January 17, 1896 filed in the local land office, notice of his intention to make proof of his claim under the Act of March 3, 1887. January 21, 1896 James A. Beacom and February 23, 1896, the complainant, respectively filed notices of their intention to claim it under the same act. February 27, 1896 Louis Hoffman the intervenor, and others, made application to enter it as a homestead. March 23, 1896 complainant and April 12, 1896, James A. Beacom, also made application to so enter it. Upon a hearing of these several claims the local land office in 1897, rejected the application of defendant Patterson, upon the authority of *Olson vs. Traver, et al.*, 26 Land Dec. 350, because he had made a modified agreement with the railroad company like the one in that case, and awarded the land to Intervenor Hoffman as the first homestead applicant. Upon appeal by Patterson, James A. Beacom and complainant, the Commissioner of General Land Office, on August 28th, 1899 sustained the decision rejecting the claim of Patterson, but reversed it so far as it awarded the land to Hoffman, and awarded it to James A. Beacom as the first homestead applicant. From this decision Patterson, Lyle, and Hoffman appealed to the Secretary of the Interior who on April 11th, 1900 sustained the decision upon the facts, but reversed it upon the appeal of Patterson, and awarded the land to him under Sec. 4 of the Act of March 3, 1887, upon the authority of *Burton et al. vs. Dockendorf*, 29 Land Dec. 429, and rejected the homestead application of the others. The government price of the land, \$400, was then paid by the railroad company to the United States for the benefit of Patterson, which sum they have ever since retained, and a patent was duly issued to him March 23, 1901. The finding of the local land office upon the homestead application of complainant are as follows;

"The evidence submitted in behalf of Roscoe Lyle shows that on the 22nd day of October 1895, he drove a covered wagon on the land in controversy stayed in the wagon over night, built a small house the next day, did some plowing in the afternoon of that day, and on the next day his house was moved off the land by Beacom, and other parties assisting him. The next day he went over to the land to move the house back, but was prevented from doing so by the Beacoms; he had no further connection with the land until the 23rd day of March 1896, when he filed his homestead application. There is no evidence tending to support his claim under the Act of March 3, 1887, and his application under such act is hereby rejected."

These findings were approved by the Commissioner of the General Land Office, who said:

"When however, Lyle went upon the land it was already in possession of Beacom, who had gone on and took up his residence early in the day, while Lyle did not go on until about seven o'clock in the evening of that day, and put on his house in the morning of the 23rd, this house was moved off on the 24 by some men, and upon his attempt to re-place it, he was threatened with its destruction if he did so."

The finding that Beacom was in possession of the land was upon the theory that Patterson had no right of possession or other right to the land because of his modified agreement with the railroad company though he, Patterson, was in fact in the undisturbed possession of the land, and has been since July 17, 1889.

The testimony does not show any connection between James A. Beacom the homestead applicant, and the defendant Thomas Beacom.

Neither the complainant nor the intervenor Hoffman have ever made any improvements upon the land, and have never paid the government fees for a homestead entry. In fact it does not appear that the intervenor was ever upon the land, and their attempts to settle upon it, if the intervenor did so attempt, were but unlawful trespasses upon the prior open and undisturbed possession of Patterson, and gave them no rights to or interest in the land;
295 and neither has any equities in it as against the defendant Thomas Beacom, who appears to be a good faith purchaser under a warranty deed, from the defendant Smith before the commencement of this suit for full value paid and secured to be paid, without notice of any defect in the title.

United States vs. California Land Co., 141 U. S. 331-44-45.

United States vs. Detroit Timber Co., 131 Fed. Rep. 668, affid. 200 U. S. 321.

Linkswiller vs. Schneider, 95 Fed. Rep. 203.

Following the rule held in the cited cases, and in Harvey vs. Holles, just decided, the bill should be dismissed at complainant's costs, without prejudice to the United States, and it is so ordered.

Filed April 1, 1908. A. J. Van Duzee, Clerk.

And on the 1st day of April, 1908, the following proceedings were had by said Court in this cause as appears of record on page 39 of Record No. 4 of the records of said Court, to-wit:

No. 210. In Equity.

ROSCOE LYLE

VS.

GEORGE W. PATTERSON, THOMAS BEACOM, T. H. SMITH, and W. M. SMITH, Defendants; LOUIS HOFFMAN, Intervenor.

The above entitled cause having been heretofore fully submitted to the Court upon the pleadings and evidence, and by the Court taken under advisement;

Now this 1st day of April, 1908, after due consideration; It is Ordered, Adjudged and Decreed, by the Court that the Bill of Complaint herein be and the same hereby is dismissed without prejudice to the rights of the United States; and that the defendants, George W. Patterson, Thomas Beacom, T. H. Smith, and W. M. Smith, have and recover of and from the Plaintiff Roscoe Lyle, and —

— the surety upon the Cost Bond filed in said cause, the costs of these proceedings taxed at \$— and that execution issue therefore, to all of which ruling and judgment plaintiff duly excepts.

And on the 29 day of May, 1908, there was filed in the office of the Clerk of said Court in this case, a Petition for Appeal, and an Assignment of errors, which are in words and figures following, to-wit:

296 In the Circuit Court of the United States, Northern District of Iowa, Western Division.

No. 210. In Equity.

ROSCOE LYLE, Plaintiff,

vs.

GEO. M. PATTERSON, T. H. SMITH, W. M. SMITH, and THOMAS BEACOM, Defendants; L. HOFFMAN, Intervenor.

Appeal and Allowance.

The above named plaintiff Roscoe Lyle, conceiving himself aggrieved by the order and decree entered April 1, 1908, in the above entitled proceeding, doth hereby appeal from said order and decree to the United States Circuit Court of Appeals, for the Eighth Circuit, and he prays that this, his appeal, may be allowed; that a transcript of the record and proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

Sioux City, Iowa, May 28, 1908.

M. B. DAVIS,

Att'y for Plaintiff & Appellant.

And now to-wit, on May 29, 1908, it is ordered that the appeal be allowed as prayed for to operate as a supersedeas; bond fixed at \$400.

HENRY T. REED, *Judge.*

Filed May 29, 1908. A. J. Van Duzee, Clerk. J. H. Bolton, Deputy.

In the Circuit Court of the United States in and for the Northern District of Iowa, Western Division.

No. 210. In Equity.

ROSCOE LYLE, Plaintiff,

VS.

GEO. M. PATTERSON, T. H. SMITH, W. M. SMITH, and THOMAS BEACOM, Defendants; L. HOFFMAN, Intervenor.

Assignment of Errors.

Comes now the appellant, Roscoe Lyle, and files the following Assignment of Errors, upon which he will rely upon his appeal from the decision made by this Honorable Court on the 1st day of April, 1908, in the above entitled cause:

That the United States Circuit Court in and for the Northern District of Iowa, Western Division, erred in rendering judgment and entering decree in favor of defendant because and upon each respectively of the following grounds:

297 1. Because the evidence shows that the land in controversy was granted by the United States to the State of Iowa by Act of Congress, approved May 12, 1864, and by said State granted to the Sioux City & St. Paul Railroad Company; and that the Sioux City & St. Paul Railroad Company having failed to complete the road within the time provided in said act of May 12, 1864, the State of Iowa, by an Act of General Assembly resumed all of the unearned lands, including the land in controversy.

2. That by another act of the General Assembly of the State of Iowa, the Governor of Iowa was directed to reconvey to the United States all of the lands that had been resumed by the State, which order was complied with in 1884.

3. Because the evidence shows that the land in controversy was decreed to be in the United States in an action in the Circuit Court of the United States, brought by the United States against the Sioux City & St. Paul Railroad Company, and the title quieted in the United States as against the said company and others, as will more fully appear from the Agreed Statement of Facts.

4. Because the evidence shows that at the time the plaintiff filed or tendered his homestead filing that the title to the land in controversy was in the United States, and subject to homestead entry.

5. Because the evidence shows that the only interest the defendant claims in the land in controversy is under a contract of purchase from the Sioux City & St. Paul Railroad Company made at a time when said company had no interest in the land.

6. Because there is no equity in Appellee's claim.

7. For reasons stated, and for other errors appearing in the opinions of the court, which are hereby referred to, and made a part hereof.

8. The court erred in dismissing plaintiff's bill.

In order that the foregoing assignments of error may be and appear of record, the Appellant, Roscoe Lyle, presents the same to the Court, and prays that such disposition may be made thereof as may be in accordance with law and equity, and the statutes of the United States, in such cases made and provided, and appellant prays
298 a reversal of the judgment and decree rendered against him, as entered by said Court.

M. B. DAVIS,
Solicitor for Appellant, Roscoe Lyle.

Filed May 29, 1908. A. J. Van Duzee, Clerk. By J. H. Bolton, Deputy.

And on the 29th day of May, 1908, the following entry was made of record in this case on page 66 of Record No. 4 of the record of this Court, to-wit:

No. 210. Equity.

ROSCOE LYLE, Complainant,

vs.

G. M. PATTERSON, T. H. SMITH, WM. SMITH, and THOMAS BEACON,
Defendants; LOUIS HOFFMAN, Intervenor.

And now to-wit, May 29, 1908, it is ordered that complainants' appeal be allowed as prayed for to operate as a supersedeas, bond fixed at \$400.

And on the 18th day of July 1908 the following Bond was filed in the office of the Clerk of said Court, in this cause, to-wit:

Bond.

Know all Men by These Presents:

That we, Roscoe Lyle, and Clarisa M. Lyle, Willie Lyle, of the County of O'Brien, and State of Iowa, are held and firmly bound unto G. W. Patterson in the full and just sum of Four Hundred Dollars, to be paid to the said G. W. Patterson, his heirs, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents;

Whereas,—Lately at the May Term 1908 of the Circuit Court of the United States, Northern District of Iowa, Western Division, in a suit pending in said Court between Roscoe Lyle, plaintiff and the above G. W. Patterson, defendant, decree was rendered against the said Plaintiff, and the said plaintiff has obtained an appeal of said cause of the Honorable Henry T. Reed, the District Judge of the United States Court in and for said Northern District of Iowa, before whom said cause was tried, to reverse the judgment and decree in the aforesaid suit and a citation directed to the said G. W. Patterson, citing and admonishing him to be and appear to the
299 United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

Now the conditions of the above obligation is such that if the said Roscoe Lyle, shall prosecute said appeal to effect, and answer all damages and costs, and if he fail to make good his plea, then the above obligation to be void, else to remain in full force and —.

[SEAL.]

[SEAL.]

[SEAL.]

ROSCOE LYLE.

CLARISSA M. LYLE.

WILLIE LYLE.

STATE OF IOWA,

O'Brien County:

I, H. C. May, Clerk of the District Court within and for said County and State, certify that Roscoe Lyle, Clarissa Lyle, and Willie Lyle, sureties on the annexed bond, are good and sufficient for the amount therein named, and that if said bond were presented to me for approval, I should approve the same.

[Seal of Court.]

H. C. MAY, *Clerk.*

Approved September 5, 1908.

HENRY T. REED, *Judge.*

Filed July 18, 1908. A. J. Van Duzee, Clerk, by J. H. Bolton, Deputy.

And on the 22, of September 1908 there was filed in the office of the Clerk of said Court in this cause, a Notice of Appeal and acceptance of service thereof, which is in words and figures following, to-wit:

In the Circuit Court of the United States, Northern District of Iowa,
Western Division.

ROSCOE LYLE, Plaintiff in Error,

vs.

GEO. M. PATTERSON et al., Defendants in Error.

Notice of Appeal.

To the Defendants in the above entitled action:

You are hereby notified that the Plaintiff has appealed from the judgment and decree rendered in said cause by the United States Circuit Court, Northern District of Iowa, Western Division, to the United States Circuit Court of Appeals, in pursuance to an assignment of Error filed in said Court.

M. B. DAVIS,
Counsel for Plaintiff.

300

I hereby accept service of the foregoing Notice of Appeal this 21st day of September 1908.

W. D. BOIES,
Att'y for Defendants in Error.

In the Circuit Court of the United States, Northern District of Iowa,
Western Division.

#210. Equity.

ROSCOE LYLE, Appellant,

vs.

GEO. M. PATTERSON, T. H. SMITH, W. M. SMITH, and THOMAS
BEACOM; L. HOFFMAN, Intervenor, Appellee.

To the Defendants above named:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, State of Missouri, sixty days from and after the date of this citation, pursuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States, Northern District of Iowa, Western Division, wherein Roscoe Lyle is appellant and Geo. M. Patterson, T. H. Smith, W. M. Smith and Thomas Beacom; L. Hoffman, Intervenor, are appellees, to show cause of any there be why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf.

Witness the Honorable Henry T. Reed, Judge of the Circuit Court of the United States, for the Northern District of Iowa, Western Division, this 23d day of September, in the year of our Lord, One Thousand, Nine Hundred and Eight.

HENRY T. REED,
*United States District Judge, for
the Northern District of Iowa.*

I hereby accept due, legal and complete service of the within citation, and copy of same.

Sheldon, Iowa, this 26th day of September, A. D. 1908.

GEO. M. PATTERSON,
T. H. SMITH,
W. M. SMITH,
THOMAS BEACOM,
By W. D. BOIES, Counsel.

210. Eq. Citation. Filed Sep. 28, 1908. A. J. Van Duzee, Clerk,
by J. H. Bolton, Deputy.

210. Eq. Citation. Filed Sep. 28, 1908. A. J. Van Duzee, Clerk,
by J. H. Bolton, Deputy.

301 UNITED STATES OF AMERICA,
Northern District of Iowa, ss:

I, A. J. Van Duzee, Clerk of the Circuit Court of the United States in and for the Northern District of Iowa, do hereby certify that the foregoing transcript contains a full, true and complete

copies of the record and proceedings in the case of Roscoe Lyle, complainant, vs. Geo. M. Patterson, T. H. Smith, and W. M. Smith, defendants and Louis Hoffman, Intervenor, No. 210 Equity, as full, true and complete as the original of the same now remain on file and of record in my office.

I further certify that the Original Citation with the return of service endorsed thereon, is hereto attached and returned herewith.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court at Dubuque in said District this 19th day of January A. D. 1901.

[Seal U. S. District Court, Northern District of Iowa.]

A. J. VAN DUZEE,
Clerk United States Circuit Court,
Northern District of Iowa.

Filed Jan. 28, 1909. John D. Jordan, Clerk.

302 (*Appearance of Mr. M. B. Davis as Counsel for the Appellant.*)

On the twenty-eighth day of January, A. D. 1909, the appearance of Mr. M. B. Davis, as counsel for the appellant, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2996,

ROSCOE LYLE, Appellant,
vs.
GEORGE M. PATTERSON et al.

The Clerk will enter my appearance as Counsel for the Appellant.
M. B. DAVIS.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2996. Roscoe Lyle, Appellant, vs. George M. Patterson, et al., Appearance. Filed Jan. 28, 1909, John D. Jordan, Clerk. M. B. Davis, Counsel for Appellant.

(*Appearance of Mr. W. D. Boies as Counsel for Appellees.*)

And on the fourteenth day of April, A. D. 1909, the appearance of Mr. W. D. Boies, as counsel for the appellees, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2996.

ROSCOE LYLE, Appellant,
vs.
GEORGE M. PATTERSON et al.

The Clerk will enter my appearance as Counsel for the Appellees.
W. D. BOIES,
Sheldon, Iowa.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit.
No. 2996. Roscoe Lyle, Appellant, vs. George M. Patterson, et al.
Appearance. Filed Apr. 14, 1909, John D. Jordan, Clerk. W.
D. Boies, Counsel for Appellees.

303 (*Appearance of Mr. E. B. Evans as Counsel for Appellee,
Intervener Hoffman.*)

And on the fifteenth day of May, A. D. 1909, the appearance of
Mr. E. B. Evans, as counsel for the appellee, Intervener Hoffman,
was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2996.

ROSCOE LYLE, Appellant,
vs.
GEORGE M. PATTERSON et al.

The Clerk will enter my appearance as Counsel for the Appellee,
Intervener Hoffman.

E. B. EVANS.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit.
No. 2996. Roscoe Lyle, Appellant, vs. George M. Patterson, et al.
Appearance. Filed May 15, 1909. John D. Jordan, Clerk. E. B.
Evans, Counsel for Appellee, Intervener Hoffman.

(*Appearance of Mr. Edwin J. Stason as Counsel for Appellant.*)

And on the tenth day of January, A. D. 1910, the appearance of
Mr. Edwin J. Stason, as counsel for the appellant, was filed in said
cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2996.

ROSCOE LYLE, Appellant,
vs.
GEORGE M. PATTERSON et al.

The Clerk will enter my appearance as Counsel for the Appellant.
EDWIN J. STASON,
Sioux City, Iowa.

304 (Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit.
No. 2996. Roscoe Lyle, Appellant, vs. George M. Patterson,
et al. Appearance. Filed Jan. 10, 1910, John D. Jordan, Clerk.
Edwin J. Stason, Counsel for Appellant.

(Order of Submission.)

And on the third day of January, A. D. 1910, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1909.

No. 2996.

ROSCOE LYLE, Appellant,
vs.
GEORGE M. PATTERSON et al.

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

MONDAY, January 3, 1910.

This cause having been called for hearing in its regular order, the same was argued by Mr. E. J. Stason in behalf of the appellant and by Mr. W. D. Boies for the appellees.

Thereupon the cause was submitted to the Court upon the transcript of record from said Circuit Court and the briefs of counsel filed herein.

(Opinion.)

And on the twenty-first day of February, A. D. 1910, the opinion of said United States Circuit Court of Appeals was filed in said cause, in the words and figures following, to-wit:

305 United States Circuit Court of Appeals, Eighth Circuit,
December Term, A. D. 1909.

No. 2996.

ROSCOE LYLE, Appellant,

VS.

GEORGE M. PATTERSON et al., Appellees.

Appeal from the Circuit Court of the United States for the Northern
District of Iowa.

Mr. Edwin J. Stason, (Mr. Madison B. Davis on brief) for Ap-
pellant.

Mr. W. D. Boies, for Appellees.

Before Sanborn, Circuit Judge, and Riner and Wm. H. Munger,
District Judges.

Wm. H. Munger, District Judge, delivered the opinion of the court.

This case was tried in the court below upon an agreed statement of facts, from which it appears that, on May 12, 1864, Congress passed an act granting lands to the State of Iowa, to aid in the construction of a railroad, from Sioux City in said state to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux and the west fork of the Des Moines river, also, to said state for the use and benefit of the McGregor Western Railroad Company for the purpose of aiding in the construction of a railroad from a point in South McGregor, in said state, in a westerly direction, by the most practical route, on or near the forty-third parallel of north latitude, until it shall intersect the said road running from Sioux City to the Minnesota State Line, in the County of O'Brien, in said state, every alternate section of land, designated by odd numbers, for ten consecutive sections in width on each side of said roads, to which the right of pre-emption or homestead settlement had not attached at the time of the definite location of such roads, and where any such alternate sections, within said ten mile limit, had been sold or pre-emption or homestead settlements attached at the time of the definite location of the road thereon, the Secretary of the Interior was authorized to select as indemnity therefor other lands in alternate sections within limits of twenty miles of said roads. On April 20, 1866, the General Assembly of the State of Iowa accepted said grant, and on the 19th day of September, 1866, the Sioux City & St. Paul Railroad Company filed in the office of the Secretary of State of Iowa its acceptance of the grant of Congress and the acts of the General Assembly of the State of Iowa, relating thereto, upon the terms, conditions and limitations therein contained, and on the 27th day of September, 1866, the Sioux City & St. Paul Railroad Company commenced the location of its line of

railroad in Sioux City, and on October 4, 1866, completed the location to the southern line of the State of Minnesota, in section 12, township 100, north range 41 West of the 5th P. M. On the 2nd of April, 1867, said Sioux City & St. Paul Railroad Company certified to the map of location and filed the same in the office of the Secretary of State of Iowa, which was afterwards certified to by the Governor and Secretary of the State of Iowa, and filed in the office of the Secretary of the Interior of the United States, and the same was duly accepted by the Secretary of the Interior as the basis for the adjustment of the land grant made to the State of Iowa. And the lands so granted to the State of Iowa within the odd numbered sections within the limits of twenty miles on each side of said road, as located on said map, were withdrawn from sale or entry under the pre-emption and homestead laws, and the price of the even numbered sections of land within the ten mile limit was increased to \$2.50 per acre. In September, 1867, said map, together with letter of withdrawal, was received by the Register of the Land Office at Sioux City, Iowa. In 1872 the Sioux City & St. Paul Railroad Company commenced the construction of its railroad from a connection with the St. Paul & Sioux City Railroad at the southern line of the State of Minnesota, at or near the southwest corner of section 31, township 101, range 40, on the southern line of said State of Minnesota, and constructed the same in a southerly direction to the town of Le Mars, in the State of Iowa, but did not construct its road between Le Mars and Sioux City but operated through trains over another line of road already constructed between said towns. Whenever ten consecutive miles of road were constructed the same was duly certified to the Secretary of the Interior and patents were issued by the United States to the State of Iowa for lands within the limits of the grant opposite the sections so constructed. The Chicago, Milwaukee & St. Paul Railroad Company, by certain acts of the Legislature of the State of Iowa, became the successor of the McGregor Western Railroad Company and completed the construction of its road from McGregor to a point of intersection with the said Sioux City & St. Paul Railroad Company, and in 1879 the Chicago, Milwaukee & St. Paul Railroad Company commenced, in the Circuit Court of the United States, for the District of Iowa, an action against the Sioux City & St. Paul Railroad Company and certain officers and trustees of the State of Iowa, to have adjusted the rights to lands within the overlapping limits of the respective railroad companies. Said action was prosecuted through the Circuit and Supreme Court of the United States, and in May, 1886, a decree was entered pursuant to a mandate of the Supreme Court, apportioning the lands between the two companies. The particular lands involved in this action were by said proceedings assigned to the Sioux City & St. Paul Railroad Company. Subsequently the State of Iowa, by its General Assembly, relinquished to the United States all the lands which had not been earned by the railroad companies under said grants.

On March 3, 1887, Congress passed an act entitled "An Act to

provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes." The first section of the act authorized and directed the Secretary of the Interior to immediately adjust in accordance with the decisions of the Supreme Court each of the railroad land grants made by Congress to aid in the construction of railroads, which had not theretofore been adjusted. The second section provided that, upon the completion of said adjustment, if it should appear that lands had been from any cause erroneously certified or patented by the United States for the use or benefit of any company claiming by, through or under grant from the United States, to aid in the construction of a railroad, the Secretary of the Interior should demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits, and if any such company should neglect or fail to reconvey within ninety days after such demand, it was made the duty of the Attorney-General to commence and prosecute in the proper courts necessary proceedings to cancel all patents, certifications, or other evidence of title, theretofore issued for said lands, and to restore the title thereof to the United States. By the fourth section of the act it was provided that lands erroneously certified or patented, and which had been sold by the grantee company to citizens of the United States or persons who had declared their intention to become such citizens, the person or persons so purchasing in good faith, heirs or assigns, should be entitled to the lands so purchased upon making proof of the fact of such purchase at the proper land office within such time and under such rules as might be prescribed by the Secretary of the Interior after the grants respectively should have been adjusted and patents of the United States should issue therefor, and should relate back to the date of the original certification or patent, and the Secretary of the Interior, on behalf of the United States, should demand payment from the company which had so disposed of such lands for an amount equal to the government price of similar lands. By Section 5 it was provided that, where any company should have sold to citizens of the United States or to persons who have declared their intention to become such citizens, as a part of its grant lands, not conveyed to or for the use of such company and such lands being the numbered sections described in the grant, and being coterminous with the constructed parts of said roads, and where the lands so sold were for any reason excepted from the operation of the grant to

308 said company, it should be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary government price for like lands, and thereupon patents should issue therefor to said bona fide purchaser, his heirs or assigns.

In February, 1873, the Sioux City & St. Paul Railroad Company selected the tract in controversy with other lands as and for a part of the lands inuring to it under said act of Congress of May 12, 1864, and filed a written list of said selection with the Register and Receiver of the Land Office at Sioux City, Iowa. Said officers, in

March, 1873, allowed and approved the filing of said list and certified the same as being within the ten mile limits of said grant and as being free and clear of homestead, pre-emption, state, or other valid claims, which list was duly transmitted to the Commissioner of the General Land Office. The Commissioner of the General Land Office, in June, 1873, approved the said selection and transmitted to the Secretary of the Interior a list embracing said tract of land. In the same month the Secretary of the Interior approved said selection and certificate, and caused copies of such approved list to be filed with the Register and Receiver at Sioux City, Iowa, and with the Governor of Iowa, and in June, 1873, the United States issued to the State of Iowa, for the use and benefit of said Sioux City & St. Paul Railroad Company, a patent embracing the tract of land in controversy and other lands, as and for a part of the lands inuring to the State of Iowa, and said Sioux City & St. Paul Railroad Company, under said act of Congress of May 12, 1864.

On or about the 21st day of May, 1887, one J. H. Pasco, then a citizen of the United States, purchased the land in controversy from the Sioux City & St. Paul Railroad Company, in consideration of certain payments made and to be made by said Pasco or assigns until the full sum of \$2,146.50 should be paid, and thereupon said Pasco entered into the possession of said land and made valuable improvements thereon. On July 17, 1889, said Pasco sold and assigned said contract for the purchase of said lands to the defendant George W. Patterson, who immediately entered into the possession thereof and made lasting and valuable improvements thereon, and said Patterson and subsequent grantees have continued in the possession, occupation and cultivation of said land continuously since said date. In the agreed statement of facts it is said that, at the time Pasco and Patterson made their purchases of said land, they each believed in good faith that the said land had been earned by the said railroad company; they knew that the land was within the ten mile limits of said railroad constructed by the said Sioux City & St. Paul Railroad Company; but did not know that the railroad company had sold all the lands it had earned at the time of their said purchase, nor did they or either of them know that the railroad company had received indemnity lands by a patent
309 from the State of Iowa of sufficient quantity, along with other lands that had been patented to said railroad by the state, to equal their entire earnings by reason of the construction of said railroad to Le Mars.

In October, 1889, the United States commenced an action in the Circuit Court for the Northern District of Iowa, against the Sioux City & St. Paul Railroad Company and others, to which action said Pasco and said Patterson were not parties, to quiet the title of the United States in and to certain lands, including those in controversy, for the reason that the same had not been earned by said Sioux City & St. Paul Railroad Company. Such proceedings were had that in October, 1890, said Circuit Court entered a judgment, quieting title to said lands in the United States, from which judgment an appeal was taken to the Supreme Court of the United States and said judg-

ment affirmed on the 21st day of October, 1895. Thereafter, on November 18, 1895, the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, addressed a communication to the Register and Receiver at Des Moines, Iowa, reciting the fact of said suit, judgment, and affirmance by the Supreme Court and directed that, in order to carry the restoration to entry of said lands into effect, they should publish a notice for a period of thirty days that the lands, a description of which was to be included in the notice, would be restored to the public domain, and subject to entry on a day to be fixed by the notice, which should be ninety days from the date of the first publication, and that all persons claiming any part thereof under the act of March 3, 1887, should come forward within the ninety days immediately following the first publication and give notice of their claim by publishing their notice of intention to make proof thereon upon a day which should be subsequent to that fixed for the restoration. Said communication contained the following sentence: "To the end that complications which might arise from the former practice of suspending application for these lands may be avoided, and the rightful claimant to acquire title with as little delay as possible, I have to direct that, in the notice of restoration, there be inserted a notice to all prior applicants that their applications confer no rights upon them and that upon the day set by you for the restoration the lands will be open to entry and disposal without regard to said applications, which shall be held by the notice to be rejected; that all such applicants may also have opportunity to present new applications upon the expiration of the ninety days' notice, you will notice specially all parties shown by your records to have pending applications for these lands of the rejection thereof, of the date of the restoration and of the necessity of presenting new applications for the protection of their rights. In all cases of conflicting claims, you will proceed in accordance with the rules of practice in contested cases." Pursuant to said communication the Register and Receiver of the United States

Land Office fixed the 27th day of February, 1896, as the date
 310 prior to which applicants under the act of March, 1887, should file their applications, and as the date upon which persons claiming under the homestead laws of the United States should file their applications, which notice was duly published, &c. On October 22, 1895, the plaintiff Lyle settled upon the land in controversy and in February, 1896, tendered to the Register and Receiver of the United States Land Office at Des Moines, Iowa, a homestead application with the necessary fees therefor to enter said land, which application and fees were refused by the Register and Receiver, and on March 24, 1896, defendant appeared before the Land Office at Des Moines, Iowa, and tendered his homestead filing for the land in controversy, alleging a settlement, residence and cultivation of said land, and the legal qualification to make said entry, and tendered the legal and proper fees and homestead filing therefor, which filing and tender of fees the officers held in abeyance, pending the trial and examination of all parties concerned therein. Pursuant to the notice aforesaid, the defendant Patterson,

on January 13, 1896, filed with the Register and Receiver of the United States Land Office at Des Moines, Iowa, his written notice of intention to make proof of defendant's purchase of the land in controversy under the provisions of the act of March 3, 1887. The Register and Receiver of the Land Office fixed the 13th day of May, 1896, upon which proof should be submitted on behalf of the plaintiff and defendant herein and all others claiming any interest in said land, notice of which date of hearing was duly published in accordance with the requirements of the Department of the Interior. On May 13, 1896, plaintiff and defendant Patterson appeared, as well as other parties who had filed application to enter the same as a homestead. At said hearing the parties made proof of their respective claims, the Register and Receiver rendered their decision in writing that one Louis Hoffman was entitled to the land in controversy as a homestead. From the decision of the Register and Receiver, plaintiff and defendant Patterson each perfected appeals to the Commissioner of the General Land Office, and in August, 1899, the Commissioner of the General Land Office rendered a decision reversing that of the Register and Receiver, and decided that one James A. Beacom was entitled to the lands under the homestead laws of the United States. From that decision the plaintiff and defendant Patterson each perfected appeals to the Secretary of the Interior. The Secretary reversed the decision of the Commissioner of the General Land Office and decided that the defendant Patterson was a bona fide purchaser of said land under and by virtue of his contract of purchase with the Railroad Company before mentioned and that he was entitled to the land in question, under the act of March 3, 1887, as a good faith purchaser. And thereafter a patent was duly issued from the United States, bearing date March 23, 1901, to the land in question to the defendant Patterson as a good faith purchaser under said act of March, 1887. Subsequent to the decision of the Secretary of the Interior, to-wit, January 30, 1901, Patterson conveyed said premises to T. H. Smith and W. H. Smith for a stated consideration of \$6360.00, and on March 31, 1901, and after the issue of the patent to Patterson, said T. H. Smith and W. H. Smith sold and conveyed the premises to defendant Thomas Beacom, in consideration of the sum of \$6600.00, and at the commencement of this suit the legal title was in the defendant Thomas Beacom. On May 24, 1901, plaintiff commenced this action in the Circuit Court of the United States for the Northern District of Iowa, setting forth in substance, but more in detail, the facts hereinbefore referred to, and praying that it be adjudged and decreed that the decision of the Secretary of the Interior, holding that defendant Patterson was entitled to said lands as a good faith purchaser under the act of March 3, 1887, be set aside, cancelled and declared void, and that the defendant Beacom hold said land in trust for plaintiff, and for a conveyance from said Beacom to plaintiff. To this action the defendants appeared, issues were joined, proofs taken, and the Circuit Court entered a decree, dismissing complainant's bill, to reverse which decree complainant prosecutes this appeal.

Numerous questions have been presented and discussed by counsel, relative to the effect and interpretation of the respective acts of Congress, and of the General Assembly of the State of Iowa, and Patterson's rights as a purchaser from the railroad company, but in the view which we take of the case but two questions only will be considered. It clearly appears by the agreed statement of facts that Pasco, in his purchase from the Railroad Company, paid the then full value of the land; that he entered into possession, and he and the subsequent assignees and grantees have continued since such purchase in the actual occupation and possession of the premises, cultivating the same, made lasting improvements, and have paid taxes thereon since the year 1887; that at the time complainant entered upon said land with a view of making a homestead settlement he knew of the occupation and possession by the defendant Patterson, of his improvements thereon, and of his claim of ownership of said land.

If it be assumed for the sake of the argument that Patterson was not entitled to acquire this land under the Congressional Act of March 3, 1887, yet his possession was not mala fides. It was obtained and held under such a state of facts that no one but the United States could question his right thereto. Under such circumstances, complainant's entry upon the lands was that of a mere trespasser, and as such he acquired no rights under the homestead laws.

In *Atherton v. Fowler*, 96 U. S. 513, the court said: "Among the things which the law required of a pre-emptor, and the principal things required of him to secure his right, were: 1. To make a settlement on the land in person. 2. To inhabit and improve the same. 3. To erect a dwelling house thereon.

312 These things were also principal requirements of the homestead law. *Harvey v. Haller*, 160 Fed. 531. In *Atherton v. Fowler*, the court also said: "It is not to be presumed that Congress intended in the remote regions where these settlements are made to invite forcible invasion of the premises of another in order to confer the gratuitous right of preference of purchase on the invaders. In the parts of the country where these pre-emptions are usually made, the protection of the law to rights of person and property is generally but imperfect under the best of circumstances. It cannot, therefore, be believed, without the strongest evidence, that Congress has extended a standing invitation to the strong, the daring, and the unscrupulous, to dispossess by force the weak and the timid from actual improvements on the public land, in order that the intentional trespasser may secure by these means the preferred right to buy the land of the government when it comes into market. * * * Does the policy of the pre-emption law authorize a stranger to thrust these men out of their houses, seize their improvements, and settle exactly where they were settled, and by these acts acquire the initiatory right of pre-emption? The generosity by which Congress gave the settler the right of pre-emption was not intended to give him the benefit of another man's labor, and authorize him to turn that man and his family out of their home.

It did not propose to give its bounty to settlements obtained by violence at the expense of others. The right to make a settlement was to be exercised on unsettled land; to make improvements on unimproved land. To erect a dwelling-house did not mean to seize some other man's dwelling. It had reference to vacant land, to unimproved land; and it would have shocked the moral sense of the men who passed these laws, if they had supposed that they had extended an invitation to the pioneer population to acquire inchoate rights to the public lands by trespass, by violence, by robbery, by acts leading to homicides, and other crimes of less moral turpitude."

That a party cannot initiate a right of homestead by settling upon land at the time in the actual possession of another, under a bona fide claim of right, is shown in the following cases: *Hosmer v. Wallace*, 97 U. S. 575; *Quinby v. Conlan*, 104 U. S. 420; *Trenouth v. San Francisco*, 100 U. S. 251; *Clipper Mining Co. v. Eli Mining Land Co.*, 194 U. S. 220-231.

To maintain this action and obtain a decree from a court of equity, awarding to him the title to the land in question, complainant must establish that he initiated such a right to the land, by settlement thereon, and offer to enter, as gave to him in equity a right to the land prior and paramount to the legal title of defendants. *Campbell v. Weyerhaeuser*, 161 Fed. 332. In this we think he has signally failed.

After the Land Department awarded the land to Patterson, complainant took no farther steps and made no farther claim to the land until the institution of this suit, and it appears from the 313 agreed statement of facts that the defendant Beacom purchased the land for full value, after a patent from the United States to defendant Patterson had issued, and without any knowledge of complainant's claim. Such being the case, his title is impregnable as against complainant. *U. S. v. Detroit Lumber Co.*, 131 Fed. 668; *Colorado Coal Co. v. U. S.*, 123 U. S. 307.

For these reasons alone, without considering other questions presented, we think the decree of the court below was right; and it is therefore

Affirmed.

Filed February 21, 1910.

314

(Decree.)

And on the twenty-first day of February, A. D. 1910, in the record of the proceedings of said Circuit Court of Appeals is a decree in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1909.

No. 2996.

ROSCOE LYLE, Appellant,

vs.

GEORGE M. PATTERSON, T. H. SMITH, W. M. SMITH, and THOMAS BEACOM; L. HOFFMAN, Intervener.

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

MONDAY, February 21, 1910.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Iowa, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court, in this cause, be, and the same is hereby, affirmed with costs; and that George M. Patterson, T. H. Smith, W. M. Smith and Thomas Beacom; L. Hoffman, Intervener, have and recover against Roscoe Lyle the sum of twenty dollars for their costs herein and have execution therefor.

February 21, 1910.

(Petition for and Order Allowing Appeal to Supreme Court U. S., and Assignment of Errors.)

And on the eighteenth day of October, A. D. 1910, a petition for and Order allowing an appeal to the Supreme Court of the United States and an assignment of errors was filed in said cause, in the words and figures following, to-wit:

315 United States Circuit Court of Appeals, Eighth Circuit.

ROSCOE LYLE, Appellant,

vs.

GEORGE M. PATTERSON, T. H. SMITH, W. M. SMITH, and THOMAS BEACOM; L. HOFFMAN, Intervener.

Petition for Appeal.

The above named appellant conceiving himself aggrieved by the decree made and entered on the 21st day of February, 1910, in the above entitled cause, affirming with costs the decree of the Circuit Court of the United States for the Northern District of Iowa, does hereby appeal from said order and decree to the Supreme Court

of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

The appellant respectfully represents that the law gives him of right an appeal of this case to the Supreme Court of the United States from the order and decree of the United States Circuit Court of Appeals for the Eighth Circuit, aforesaid, that the case is one in which the jurisdiction is not dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the United States or citizens of different states, that the case does not arise under the patent laws, that it does not arise under the revenue laws, that it does not arise under the criminal laws and that it is not an admiralty case, and that the matter in controversy exceeds one thousand dollars besides costs.

MADISON B. DAVIS,
SULLIVAN AND GRIFFIN, AND
ALFRED PIZEY,

Attorneys for Appellant.

Upon consideration of the foregoing petition and of the assignment of errors presented therewith, it is now here ordered that an appeal to the Supreme Court of the United States, be, and the
316 same is hereby, allowed, as prayed for in said petition.

Dated this 18 day of October, A. D. 1910.

WALTER H. SANBORN,
*Presiding Judge of the U. S. Circuit Court
of Appeals, Eighth Circuit.*

United States Circuit Court of Appeals for the Eighth Circuit.

ROSCOE LYLE, Appellant,

vs.

GEORGE W. PATTERSON, T. H. SMITH, W. M. SMITH, THOMAS
BEACOM; L. HOFFMAN, Intervenor, Appellees.

Assignment of Errors.

The appellant in the above entitled cause, in connection with his petition for appeal therein, presents and files therewith his assignment of errors, as to which matters and things he says that the decree entered in said cause on the 21st day of February, A. D. 1910, is erroneous, to-wit:

First. The defendants and appellants are not purchasers in good faith within the Act of Congress of March 3, 1887 (c. 376, 24 Stat. 556), or purchasers for value and without notice, and the title to the land was in the United States and subject to homestead entry at the time the appellant filed or tendered his homestead filing; and the Court erred in adjudging that the appellant had not, by his acts

and his contest in the Land Department and the Courts, initiated and kept alive a right which entitled him to the relief prayed in his bill.

Second. The defendant and appellee, George W. Patterson, was not in possession of the land in controversy at the time the appellant settled thereon.

Third. There is no equity in the claim of the appellees.

Fourth. The Court erred in affirming the decree.

317 Wherefore, the appellant prays that said decree may be reversed, and that appellant may have an adjudication and decree in his favor as herein specified.

MADISON B. DAVIS,
SULLIVAN AND GRIFFIN, AND
ALFRED PIZEY,

Attorneys for Appellant.

(Endorsed:) No. 2996. Roscoe Lyle, Appellant, vs. George W. Patterson, et al. Petition for and Order allowing Appeal to United States Supreme Court, and Assignment of Errors. Filed Oct. 18, 1910. John D. Jordan, Clerk.

(Bond on Appeal to Supreme Court of the United States.)

And on the eighteenth day of October, A. D. 1910, a bond on appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Eighth Circuit.

ROSCOE LYLE, Appellant,

VS.

GEORGE W. PATTERSON, T. H. SMITH, W. M. SMITH, THOMAS BEACOM; L. HOFFMAN, Intervenor, Appellees.

Bond on Appeal.

Know All Men by These Presents, that we, Roscoe Lyle, of O'Brien County, Iowa, William Lyle and Clarissa M. Lyle of Woodbury County, Iowa, and Elon Lyle, of the County of O'Brien, and State of Iowa, are held and firmly bound unto G. W. Patterson, T. H. Smith, W. M. Smith, and Thomas Beacom, in the sum of One Thousand Dollars (\$1,000), to be paid to the said George W. Patterson, T. H. Smith, W. M. Smith, and Thomas Beacom; we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

318 Sealed with our seals and dated the 9th day of September, A. D., 1910.

Whereas, the appellant in the above entitled cause has prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered and entered in said cause in the Circuit Court

of Appeals for the Eighth Circuit on the 21st day of February, A. D., 1910.

Now, therefore, the condition of this obligation is such that if the said appellant shall prosecute said appeal to effect and answer all damages and costs, if he fails to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

ROSCOE LYLE.
WILLIAM LYLE.
CLARISSA M. LYLE.
ELON LYLE.

STATE OF IOWA,
County of Woodbury, ss:

William Lyle and Clarissa M. Lyle, sureties names in foregoing bond being first duly sworn, each for himself and herself says:

That he is a resident and free-holder in the County of Woodbury, State of Iowa, and worth the sum of Two Thousand Dollars. (\$2,000) over and above all his just debts and liabilities, exclusive of property exempt from execution.

WILLIAM LYLE.
CLARISSA M. LYLE.

Subscribed and sworn to before me this 9th day of September, A. D., 1910.

[SEAL.]

DANIEL H. SULLIVAN,
*Notary Public in and for the County of
Woodbury, State of Iowa.*

The foregoing bond is approved this 18th day of October, A. D., 1910.

WALTER H. SANBORN,
United States Circuit Judge, Eighth Circuit.

319 STATE OF IOWA,
O'Brien County, ss:

I, Elon Lyle, Surety named in the foregoing bond, being first duly sworn, do say: That I am a resident and freeholder in the County of O'Brien, State of Iowa, and am worth the sum of Two Thousand Dollars (\$2,000.00) over and above all my just debts and liabilities, exclusive of property exempt from execution.

ELON LYLE.

Subscribed and sworn to before me this 12th day of September, 1910, by Elon Lyle.

[SEAL.]

R. J. LOCKE,
Notary Public for O'Brien County, Iowa.

STATE OF IOWA,
O'Brien County, ss:

I, W. J. E. Thatcher, Clerk of the District Court within and for said County and State, hereby certify that William Lyle, Clarissa

M. Lyle, Elon Lyle, Sureties on the annexed Bond, are good and sufficient for the amount therein named, and that if said Bond were presented to me for approval, I should approve the same.

[SEAL.]

W. J. E. THATCHER, *Clerk*,
By ———, *Deputy*.

(Endorsed:) No. 2996. United States Circuit Court of Appeals, Eighth Circuit. Roscoe Lyle, Appellant, vs. George W. Patterson et al., Appellees. Bond on Appeal. Filed Oct. 18, 1910. John D. Jordan, Clerk. Madison B. Davis, Sullivan and Griffin and Alfred Pizsy, Attorneys for Appellant.

320

(Citation.)

And on the third day of November, A. D. 1910, a citation on appeal to the Supreme Court of the United States was filed in said cause, the original of which with acceptance of service endorsed thereon is hereto attached and herewith returned:

321 United States Circuit Court of Appeals for the Eighth Circuit.

ROSCOE LYLE, Appellant,

vs.

GEORGE W. PATTERSON, T. H. SMITH, W. M. SMITH, THOMAS BEACOM; L. HOFFMAN, Intervenor, Appellees.

Citation on Appeal.

To the above-named appellees:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, in the District of Columbia, thirty days after the day of signing of this citation, pursuant to an appeal allowed and filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, wherein Roscoe Lyle is Appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, Presiding Judge of the United States Circuit Court of Appeals for the Eighth Circuit, this Eighteenth day of October, A. D. 1910.

WALTER H. SANBORN,
*Presiding Judge United States Circuit
Court of Appeals, Eighth Circuit.*

- 322 I hereby accept due, legal and complete service of the foregoing citation, and acknowledge receipt of a copy of same.
Dated at Sheldon, Iowa, this 31st day of October, A. D. 1910.

GEORGE W. PATTERSON,
T. H. SMITH,
W. M. SMITH,
THOMAS BEACOM,

By W. D. BOIES,
Counsel for the Above-named Appellees.

- 323 [Endorsed:] No. 2996. United States Circuit Court of Appeals for the Eighth Circuit. Roscoe Lyle, Appellant, vs. George W. Patterson et al., Appellees. Citation on Appeal. Filed Nov. 3, 1910. John D. Jordan, Clerk. Madison B. Davis, Sullivan and Griffen and Alfred Pizey, Attorneys for Appellant.

324 *(Clerk's Certificate.)*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing three hundred twenty-four pages contain a true copy of the transcript of record as printed pursuant to the stipulation of the parties and upon which record said cause was heard and full, true and complete copies of all proceedings and record entries, including the opinion of said Circuit Court of Appeals, in a certain cause in said Court wherein Roscoe Lyle is Appellant and George M. Patterson, T. H. Smith, W. M. Smith, and Thomas Beacom; L. Hoffman, Intervener, are Appellees, No. 2996, as full, true and complete as the originals of same remain on file and of record in my office.

I do further certify that the original citation with acceptance of service endorsed therein is hereto attached and herewith returned.

I do further certify that on the twenty-second day of April, A. D. 1910, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the Judges of the Circuit Court of the United States for the Northern District of Iowa.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this fourth day of November, A. D. 1910.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

Endorsed on cover: File No. 22,401. U. S. circuit court appeals, 8th circuit. Term No. 167. Roscoe Lyle, appellant, vs. George W. Patterson, T. H. Smith, W. M. Smith, et al. Filed November 14th, 1910. File No. 22,401.

12
APPELLANT'S BRIEF AND ARGUMENT.

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 167.

ROSCOE LYLE, *Appellant*,

vs.

GEORGE W. PATTERSON, T. H. SMITH,
W. M. SMITH, ET AL., *Appellees*.

APPEAL FROM THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE
EIGHTH CIRCUIT.

MADISON B. DAVIS, SULLIVAN & GRIFFIN
AND ALFRED PIZEY, *Solicitors for Appellant*.
W. D. BOIES, *Solicitor for Appellees*.

Office Supreme Court, U. S.
FILED.

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JAMES H. MCKENNEY,
CLERK.



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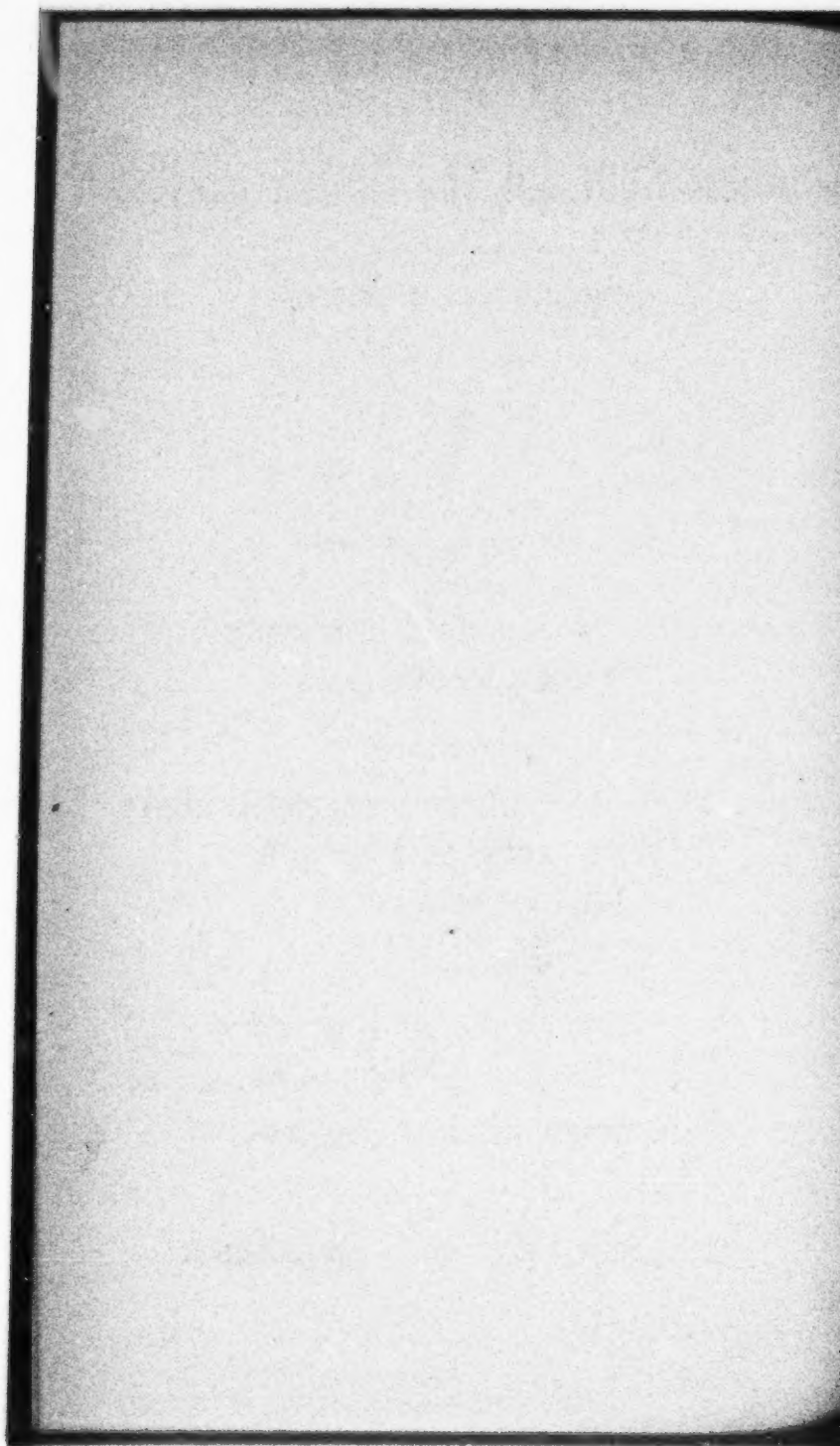
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APPELLANT'S BRIEF AND ARGUMENT.



STATEMENT OF FACTS.

The land in controversy is the South West Quarter of Section 3, Township 97, Range 42, in O'Brien County, Iowa. (Transcript, pp. 12, 163.)

This tract was within the limits of the grant by Congress to the State of Iowa, approved May 12, 1864, to aid in the construction of a railroad from Sioux City, Iowa, to the south line of the State of Minnesota. The grant was of every alternate section of land designated by odd numbers for ten sections in width on each side of said road with indemnity limits not to exceed twenty miles; to be subject to the disposal of the legislature of Iowa for the purposes of the grant and no other. The grant further provides that when the Governor of the State should certify to the Secretary of the Interior that any ten miles of the road is completed, the latter shall issue to the State patents for one hundred sections of land for the benefit of the road; that if the road is not completed within ten years from the acceptance of the grant, the lands granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of the road within such time, not to exceed five years, and upon such terms, as the State shall determine; that the lands shall not be disposed of or encumbered, except as they are patented under the provisions of the Act, and should the State fail to complete the road within five years after the said ten years, the lands undisposed of shall revert to the United States; that the lands embraced within the grant shall be withdrawn from market by the Secretary of the Interior, as soon as the Governor of Iowa shall file or cause to be filed with the former, a map designating the route of the road. (Transcript, pp. 4-6; 94-96.)

This grant was accepted by the State of Iowa, by Act of its General Assembly, approved April 3, 1866, which provided that the lands, interests, rights, powers and privileges, that are or may be granted and conferred in pursuance of the Congressional grant, are hereby disposed of, granted and conferred upon the

Sioux City & St. Paul Railroad Company. (Transcript, pp. 96, 97.)

A further Act of the General Assembly of Iowa, accepting the grant was approved April 20, 1866. It provided that whenever any lands shall be patented to the State of Iowa, in accordance with the provisions of the grant, said lands shall be held by the State in trust for the benefit of the Railroad Company as shall be ordered by the Legislature of the State, at its regular session or at any session thereafter. (Transcript, p. 98.)

The Sioux City & St. Paul Railroad Company assented to and accepted the grant, under the provisions of the Act of the General Assembly of Iowa, as approved April 3, 1866, by resolution of the Board of Directors of date September 19, 1866; its map of definite location of the road was accepted by the Secretary of the Interior; and thereafter on September 2, 1867, the lands within the limits of the grant were withdrawn from market by the local land office under instructions from the Commissioner of the General Land Office. (Transcript, pp. 99, 100; 101; 103.)

In the year 1872 the Railroad Company constructed 56 1/4 miles of road, from the Minnesota line south to Le Mars, in Plymouth County, Iowa, a point about 25 miles from the Sioux City terminus. The construction of five ten-mile sections of the road was certified to the Secretary of the Interior (Transcript, pp. 103-106), and he on June 17, 1873, caused to be issued "unto the State of Iowa, for the use and benefit of the Sioux City & St. Paul Railroad Company" a patent for 205,374.76 acres of lands selected by the Company, and embracing the land in controversy. (Transcript, pp. 64-5; 74; 146-147.) Other patents similar in form and substance were issued to the State for the benefit of the Company, making the total acreage thus patented 407,870.21 acres. (Transcript, p. 79.)

After the issuance of two of said patents to the State of Iowa, of date October 16, 1872, and June 17, 1873, conveying 396,838.80 acres (Transcript, p. 79), the General Assembly of

the State by Act approved March 12, 1874, authorized the Governor to certify to the Company any and all lands now held in trust for its benefit, in accordance with the provisions of Section 2, of the Act of April 20, 1866. (Trnascript, pp. 98; 106.)

Pursuant to the above Act of the General Assembly of Iowa, the State certified or patented to the Company, 322,412.81 acres of land, the tract in controversy not being included. which acreage was afterwards reduced 41,687.51 acres by decree of Court awarding the same to the Chicago, Milwaukee & St. Paul Railway Company under an overlapping grant. (Transcript, pp. 133-6.)

By Act of the General Assembly of Iowa, approved March 16, 1882, the State resumed all the lands and rights conferred upon the Company by or under the Congressional grant and Acts of the General Assembly of the State, not earned by the Company. The Act after reciting the failure of the Company to complete or cause to be completed its line of road, provides:

"That all lands, and all rights to lands granted or intended to be granted to the Sioux City & St. Paul Railroad Company by said Acts of Congress and of the General Assembly of the State of Iowa, which have not been earned by said Railroad Company by a compliance with the conditions of said grant, be and the same are hereby absolutely and entirely resumed by the State of Iowa, and that the same be and are absolutely vested in said State as if the same had never been granted to said Railroad Company." (Transcript, p. 148.)

A further Act of the General Assembly of Iowa, approved March 27, 1884, after reciting the failure of the Company to complete its line of road, and the resumption by the State of the unearned lands by the Act of March 16, 1882, provides:

Sec. 1. That all lands and all rights to lands resumed and intended to be resumed by chapter one hundred and seven (107) of the Acts of the 19th General Assembly of the State of Iowa are hereby relinquished and conveyed to the United States.

Sec. 2. The Governor of the State of Iowa is hereby authorized and directed to certify to the Secretary of the Interior all lands which have heretofore been patented to the State, to aid in the construction of said railroad, and which have not been patented by the State to the Sioux City & St. Paul Railroad Company, and the list of lands so certified by the Governor shall be presumed to be (same) the lands relinquished and conveyed by Section 1 of this Act.

Provided that nothing in this section contained shall be construed to apply to lands situated in the Counties of Dickinson and O'Brien. (Transcript, pp. 149-50.)

Pursuant to said last mentioned Act of the General Assembly of Iowa, the Governor of the State on January 12, 1887, certified to the Secretary of the Interior 26,117.32 acres of the lands which had been patented to the State but not by the State to the Company, the lands so certified being in Plymouth, Sioux and Woodbury Counties only.

The Sioux City & St. Paul Railroad Company or its successors never constructed its line of road from Le Mars to Sioux City, and the State never completed or caused to be completed that part of the road and never certified or conveyed to the Company or to any one the land in controversy (Transcript, pp. 77-80); and when the rights of the Company terminated by the lapse of the ten years allowed by the grant for the completion of the line of road, it had acquired from the State more land than it was entitled to receive. (Transcript, pp. 140, 141; United States vs. Sioux City & St. Paul R. Co., 150 U. S. 349, 370, affirming 42 Fed. 617.)

On March 3, 1887, Congress passed an Act (24 Stat. at L., p. 556) entitled "An Act to Provide for the Adjustment of Land Grants made by Congress to aid in the construction of Railroads and for the Forfeiture of Unearned Lands, and for other purposes," which provided in part as follows:

Sec. 1. That the Secretary of the Interior be and is hereby authorized and directed to immediately adjust, in accordance

with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads and *heretofore unadjusted*.

Sec. 2. That if it shall appear upon the completion of such adjustments respectively, or sooner, that lands have been, from any cause, heretofore erroneously certified or patented by the United States to or for the use or benefit of any company claiming by, through or under grant from the United States to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits; * * *.

Sec. 4 That as to all lands * * * which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased, upon making proof of the fact of such purchase at the proper land office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants respectively shall have been adjusted, and patents of the United States shall issue therefor, and shall relate back to the date of the original certification or patenting, * * *.

Sec. 5. That where any said company shall have sold to citizens of the United State, as a part of its grant, lands not conveyed to or for the use of said company, said lands being the numbered sections prescribed in the grant, and being coterminious with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to the said bona fide purchaser. * * *."

In January, 1887, an application was filed with the Secretary of the Interior on behalf of settlers of O'Brien County, Iowa, asking that suit be commenced by the United States to assert title to lands unearned by the Company, averring that the applicants were settlers on the lands seeking to acquire title from the United States. The Secretary, by letter to the Commissioner of the General Land Office of date July 26, 1887, after exhaustively reviewing the legislation pertaining to the grant, and the right of the State of Iowa and of the Company under it, in the light of the law and the facts, directed that suit be brought unless voluntary relinquishment and reconveyance of the lands were made. (Transcript, pp. 130-140.) On October 4, 1889, suit was commenced by the United States pursuant to such direction, against the Sioux City & St. Paul Railroad Company and the trustees in a mortgage given by it, to establish and quiet title in the plaintiff to unearned lands in Dickinson and O'Brien Counties, Iowa; and on December 18, 1890, decree was entered as prayed for 21,979.85 acres, including the tract in controversy. (Transcript pp. 152-4.) This decree was affirmed by the United States Supreme Court on appeal, October 21, 1895 (150 U. S. 349, affirming 42 Fed. 617).

On June 21, 1887, one J. H. Pasco entered into a written contract with the Company for the purchase from it of the tract in controversy, and on July 17, 1889, Pasco sold and assigned the contract to appellee, George W. Patterson and another, said George W. Patterson afterwards acquiring the entire interest in the contract. This contract was modified by and between the parties under date of April 25, 1895, as follows:

"That in the event of a decision in the above entitled action in the United States Supreme Court adverse to said Sioux City & St. Paul Railroad Company, as to the title to said land above described, the said party of the second part will within ninety days thereafter surrender said original agreement and this modification thereof to the parties of the first part, at St. Paul, Minnesota, and receive therefor from the said parties of the first part, or

either thereof the amount which has been then paid on said agreement on account of principal and interest mentioned in said original agreement, the same to be received and accepted by said second party in full settlement of all his rights under said original agreement, and this modification thereof, and as a release of any and all claims suffered by said party of the second part, his heirs, executors, administrators, or assigns, by reason of the failure of the title of said parties of the first part to said land." (Transcript, pp. 177, 186.)

The Register and Receiver of the Land Office at Des Moines, Iowa, pursuant to an order of the Commissioner of the General Land Office of November 18, 1895, providing for the disposal by the United States of said unearned lands, including the tract in controversy, as part of the public domain, duly fixed February 27, 1896, as the date prior to which claimants under the Act of Congress of March 3, 1887, aforesaid, should file their applications, and as the date upon which the lands would be subject to entry under the homestead laws. (Transcript, pp. 81; 156 to 158.)

On October 22, 1895, the appellant, Roscoe Lyle, settled on the tract of land in controversy, and on February 24, 1896, and again on March 24, 1896, tendered to the Register and Receiver a homestead filing thereon accompanied by the necessary fees. (Transcript, p. 81.) Appellee, George W. Patterson, filed application on January 17, 1896, as a claimant for said tract under the Act of Congress of March 3, 1887, aforesaid; and on January 21, 1896, James A. Beacom filed application as such claimant. Louis Hoffman and several other persons tendered applications for homestead filings on February 27, 1896. Hearing ordered between the applicants was duly had before the Register and Receiver, commencing May 13, 1896. (Transcript, pp. 163-4.) These officers on April 21, 1897, decided in favor of Louis Hoffman, a homestead applicant, and rejected all other applications. (Transcript, pp. 37-40.) An appeal to the Commissioner was taken by Patterson, Lyle and Beacom, the latter having, it seems,

tendered a homestead filing on May 12, 1896, additional to his application under the Act of Congress of March 3, 1887; and on August 28, 1889, the Commissioner decided in favor of the homestead application of Beacom, subject to a hearing on his right to make a second homestead entry, the hearing to be solely between him and Lyle. (Transcript, pp. 245-251.) From this decision Patterson, Hoffman and Lyle appealed to the Secretary, who, on April 21, 1900, reversed the decision of the Commissioner, rejected all applications except that of Patterson, and held him entitled to a confirmatory patent under Section 4 of the Act of Congress of March 3, 1887, aforesaid, as purchaser from the Railroad Company. (Transcript, pp. 252-3.)

The legal title to the tract in controversy did not pass from the United States until March 23, 1901, on which date the patent issued to George W. Patterson, as a good faith purchaser under said Section 4 of the Act of Congress of March 3, 1887. The patent was filed for record in O'Brien County, on April 15, 1901.

On January 30, 1901, said Patterson conveyed the land to appellees T. H. Smith and W. M. Smith, jointly, and on March 31, 1901, the latter conveyed it to appellee Thomas Beacom. (Transcript, pp. 82, 93.) On May 24, 1901, this suit was brought by appellant, in equity, based on his homestead application and settlement; alleging that defendants were not good faith purchasers entitled to the land under the Act of Congress of March 3, 1887; that the issuance of the patent to appellee Patterson was contrary to law, and asking that it be decreed that appellee Beacom holds the land in trust for and that he convey the same to appellant, and that appellant have such other relief as the Court may deem meet and just. The Trial Court on final hearing decided in favor of appellees and dismissed the bill without prejudice to the United States, and on appeal to the United States Circuit Court of Appeals this decision was affirmed. (Transcript, pp. 254, et seq.; 176 Fed., 909, affirming 106 Fed. 534.) The cause is now in this Court for review, on appeal from the decision of affirmance.

ASSIGNMENT OF ERRORS.

The appellant alleges in connection with his petition for appeal herein:

First. The defendants and appellants are not purchasers in good faith within the Act of Congress of March 3, 1887 (c. 376, 24 Stat. 556), or purchasers for value and without notice, and the title to the land was in the United States and subject to homestead entry at the time appellant filed or tendered his homestead filing; and the Court erred in adjudging that the appellant had not, by his acts and his contest in the Land Department and the Courts, initiated and kept alive a right which entitled him to the relief prayed in his bill.

Second. The defendant and appellee, George W. Patterson, was not in possession of the land in controversy at the time the appellant settled thereon.

Third. There is no equity in the claim of the appellee.

Fourth. The Court erred in affirming the decree. (Transcript, pp. 274-5.)

This assignment of errors presents the following questions for decision: I. Whether the purchaser and his grantees, under a contract to purchase from the Sioux City & St. Paul Railroad Company, the tract of land in controversy, not earned by it and to which it never had any title whatever, by contract entered into more than three months after the passage of the Act of Congress of March 3, 1887, aforesaid, and subsequently so modified by the parties as to render it inoperative as a contract of purchase upon the happening of a certain contingency, which contingency happened, are bona fide purchasers and entitled to the land confirmed to the purchaser by patent under said Act of Congress; and, II, whether, if the purchaser and his grantees are not entitled to the land, the appellant who sought to settle upon it, as a homestead, and to enter it as such pursuant to the proclamation of the Land Department of November 18, 1895, and who has done everything within his power to do, both in the Land De-

partment and in the Courts, to sustain and defend his rights under said proclamation, is entitled to recover it from them.

I. THE APPELLEES ARE NOT BONA FIDE PURCHASERS UNDER THE ACT OF CONGRESS OF MARCH 3, 1887, OR OTHERWISE, AND ARE NOT ENTITLED TO THE LAND CONFIRMED TO APPELLEE, GEORGE W. PATTERSON, BY PATENT UNDER SAID ACT.

(1) The Act of Congress of May 1, 1864, granted to the State of Iowa the land in controversy and other land to aid in the construction of a railroad, no company or person being named as beneficiary. It provided that patents of one hundred sections of land for the benefit of the road, should be issued to the State for each ten miles of road, after the same had been completed and completion certified; that if the road was not completed within ten years from acceptance of grant, lands not thus patented should revert to the State for the purpose of securing completion thereof; that lands should not be disposed of or encumbered, except as same are patented; and that should the State not complete the road within five years after said ten years, lands undisposed of should revert to the United States.

By Act of the General Assembly of Iowa, approved March 16, 1882, the State resumed all lands and rights to lands which had not been earned, and which included the tract in controversy, and vested them absolutely in the State. By a later Act, approved March 27, 1884, the State relinquished and conveyed to the United States all the lands resumed as aforesaid (Section 1); it being provided (Section 2), that the Governor of the State should certify the lands to the Secretary of the Interior, the list to be presumed to be the lands relinquished and conveyed by the Act, and that nothing in Section 2 should be construed to apply to lands situated in Dickinson and O'Brien Counties.

The character of this grant by Congress, and the effect of the subsequent course of events including the failure of the Sioux City & St. Paul Railroad Company to complete the road, are clearly

stated by this Court, opinion by Mr. Justice Harlan, in the suit to quiet title in the United States to the unearned lands, as follows:

"Giving effect to these rules of statutory interpretation we cannot suppose that Congress intended that the Railroad Company should have the benefit of more lands than it earned. As the lands granted could only be devoted to the construction of the Sioux City road from Sioux City to the Minnesota line, and as the State, holding the legal title, in trust, has not disposed of and does not intend to dispose of them for the purpose of completing that part of the road between Sioux City and Le Mars, we perceive no sound reason why, within the meaning of the Act of 1864, these lands may not be regarded as 'undisposed of,' and equitably the property of the United States, if it be true that the Railroad Company has received as much of the public lands as it was entitled to have on account of constructed road certified to by the Governor of the State. This was the interpretation placed by the State upon the Act of Congress; for by the Act of the Iowa Legislature of March 16, 1882, the State, because of the failure of the Sioux City Company to construct any road between Sioux City and Le Mars, resumed the title to the lands that had not been 'earned' by the Railroad Company; and by the subsequent statute of March 27, 1884, it relinquished and conveyed to the United States all lands and rights of land resumed and intended to be resumed by a previous Act, * * *.

Another contention is that, upon the issuing of the patents of 1872 and 1873 to the State for the use and benefit of the Railroad Company, the title vested absolutely in the Company, and the lands were thereby freed from restraints to forfeiture. In support of this contention, reference is made to *Bybee vs. Railroad Company*, 139 U. S., 663, 674, 676, 677, 11 Sup. Ct., 641; *Van Wyck vs. Knevals*, 106 U. S., 360 (and other cases). But these are cases, as an examination of them will show, in which the grant was directly to the Railroad Company, or in which the Act of Congress required that the patents for lands earned should be

issued, not to the State for the benefit of the Railroad Company, but directly to the Company itself. In the case now before us the statute directed patents to be issued to the State for the benefit of the Company. So that, until the State disposed of the lands, the title was in it as trustee, and not in the Railroad Company. *Shulenberg vs. Harriman*, 21 Wall., 59; *Iron Co. vs. Cunningham*, 155 U. S., 372, 15 Sup. Ct., 103 (and other cases). The question is altogether different from what it would be if patents for these lands had been issued, or if the State had conveyed them directly to that Company, * * *.

Our conclusion, then, is that the Sioux City Company having failed to complete the entire road, for the construction of which Congress made the grant in question, was not entitled to the whole of the lands granted, but, at most, only 100 odd numbered sections, as these sections were surveyed, whatever their quantity, for each section of ten consecutive miles constructed and certified to by the Governor of the State; and that according to the measurement of 1887, which is accepted as the basis of calculation, the Railroad Company had, prior to the institution of this suit, received more lands, on account of the 50 miles of constructed road certified by the Governor, than it was entitled to receive. Under this view it is unnecessary to inquire whether the particular lands here in dispute should not have been assigned to the Company, rather than other lands containing a like number of acres, that were in fact transferred to it, and which cannot now be recovered by the United States, by reason of their having been disposed of by the Company. If the Company has received as much in quantity as should have been awarded to it, a court of equity will not recognize its claim to more, in whatever shape the claim is presented * * *. The bill also states that the lands in Dickinson and O'Brien Counties here in dispute aggregate 21,979.85 acres, and so the decree below assumes. The amount appears to be 21,692.18 acres, and it was so stated by Secretary Lamar (6 Land Dec., 63). But these differences are immaterial on the present appeal, for we adjudge that, though the lands in dispute were

patented to the State for the use and benefit of the Sioux City Company, the latter is not entitled to any part of them, whatever may be the aggregate quantity of acres."

Sioux City & St. Paul Railroad Company vs. United States, 159 U. S., 349, 361-2, 363-4, 370-1.

Similar pronouncements have been made by the trial Federal Courts in controversies over unearned lands in O'Brien County, Iowa. Thus in an opinion by Shiras, District Judge, he says in part:

"It will be remembered that the State of Iowa never conveyed or transferred to the Railway, or to any one for its use or benefit, the unearned lands in O'Brien and Dickinson Counties. These lands were patented to the State, it being recited in the patent that they were for the use and benefit of the Sioux City & St. Paul Railroad Company; but owing to the failure of the Company to complete the line from Le Mars to Sioux City, the State refused to patent them to the Company, and the legal title thereto never passed to the Company. It is strongly contended on part of the defendant that the transfer to the State was a conveyance for the use and benefit of the Company, but the true intent and meaning of this patent is to be derived from a consideration of its real purpose, and of the authority, with reference to this grant, conferred by the Act of Congress of 1864, upon the Land Department and the State of Iowa. The Act of Congress did not name the Sioux City & St. Paul Company as the grantee or beneficiary of the donation thereby made. The Act granted the lands to the State of Iowa, as a trustee. * * * It would have been a violation of the terms of the grant if the State had conveyed these unearned lands to the Company. * * * The Company having failed to earn them, it acquired no title or right, legal or equitable, thereto, and it became the duty of the State to hold the lands for the benefit of the United States, to whom they reverted under the express provisions of the Act of 1864. * * * The mere transfer of the lands to the State as a trustee did not vest a title thereto in the Railway Company, nor did the Company

ever occupy a position which enabled it to rightfully demand a conveyance of the lands from the State."

Manley vs. Tow, 110 Fed. 241, 249-50-51.

By the Acts of the General Assembly of Iowa of March 16, 1882, and March 27, 1884, these unearned lands had been resumed by the State and relinquished and conveyed to the United States. . . and no other forfeiture by judicial proceedings or otherwise, was necessary to terminate all rights of the Company under the grant of May 12, 1864.

"A forfeiture by the State of an interest in lands and connected franchises, granted for the construction of a public work, may be declared for non-compliance with the conditions annexed to their grant, or to their possession, when the forfeiture is provided by statute, without judicial proceeding to ascertain and determine the failure of the grantee to perform the conditions.

* * * That mode is not essential to the divestiture of the interest where the grant is for the accomplishment of an object in which the public is concerned, and is made by a law which expressly provides for the forfeiture when that object is not accomplished. Where land and franchises are thus held, any public assertion by Legislative Act of the ownership of the State, after default of the grantee, such as an Act resuming control of them and appropriating them to particular uses, or granting them to others to carry out the original object—will be equally effective and operative."

Farnsworth vs. Minnesota and Pacific R. R. Co., 92 U. S., 49, 23 L. ed. 530, 535.

On the passage of the said Act of the General Assembly of Iowa, of March 27, 1884, if not before, the lands reverted to and became again a part of the undisposed public lands of the United States. In a case also involving a tract of these unearned lands situated in O'Brien County, Iowa, this Court, opinion by Mr. Justice Harlan, says:

"The State could only have conveyed lands to the Company in consideration of constructed road; and subject to that con-

dition the Company undertook to construct the road. When it abandoned the work of construction it lost the right to claim lands except for such road as it had previously constructed. The State therefore properly resumed, as by the Act of 1882 it did resume, after the Company's default, such title to the unearned lands as it had before authorizing the Company to construct the road. The State after thus resuming the title could have used the unearned lands to aid in the construction of that portion of the road which the Railroad Company failed to construct. But it did not do so, and hence by the Act of April 2, 1884—eighteen years after it accepted, in 1866, the grant of 1864 and the completion of the road having been abandoned—the State, by statute, formally relinquished to the United States all its right, title and interest in the unearned lands pertaining to the Sioux City & St. Paul Railroad Company. This statute was perhaps unnecessary, as by the Act of 1864 the title to the unearned lands granted by that Act was to revert to the United States after the expiration of fifteen years from the acceptance of the grant without the completion of the road. But the relinquishment by the State saved the necessity, if there was a necessity, of formal proceedings, legislative or judicial, by the United States to reinvest itself with full title. Thus the title to the unearned lands was put back into the United States."

Knepper vs. Sands, 194 U. S., 476, 484.

(2) Such was the status of the land in controversy as early as the year 1884, some three years prior to the passage of the Act of Congress of March 3, 1887, for the adjustment of railroad land grants, under Section 4 of which confirmatory patent issued to appellee, George W. Patterson.

The contract of appellee, George W. Patterson, with the Railroad Company was executed over three months after the passage of this adjustment Act. Sections 4 of the Act, under which the patent issued provides:

"That as to all lands * * * *which have been so erroneously certified or patented as aforesaid, and which have been sold* * *

by the *grantee* Company * * * the person or persons so purchasing in good faith * * * shall be entitled to the lands so purchased, etc."

Giving effect to the ordinary rules for the construction of statutes and grants, this section could have no application to purchasers from the Company after the passage of the Act; and this view has the support of some of the earlier decisions in the trial Courts.

"The natural construction of the words used in the fourth section, to-wit, 'that as to all lands, * * * which have been sold by the grantee Company,' would limit the application of the section to the lands that had been sold previous to the date of the Act. If it be held that the section applies also to lands sold after the Act took effect, then, by construction, the rights of the grantees and purchasers holding under it are enlarged as against the rights of the grantor, to-wit, the United States. Furthermore, if the provisions of section 4 are held to apply to unearned lands sold after the adoption of the resumption Act of 1887, then it will result in giving the preference to speculating purchasers over actual settlers, who have spent time, labor, and money in the building up homes upon these lands, and will be a complete reversal of the rule heretofore followed by Congress, by the Land Department, and the Courts in dealing with the dispositions of the public domain, to-wit, to give the preference to the actual settler. * * *

I can conceive of no equity existing in persons purchasing portions of the unearned lands after the time when Congress, by adopting the Act of 1887, had declared its purpose to forfeit the unearned lands, which calls for protection either against the United States, or against actual settlers whose occupancy and improvements antedate the purchase from the delinquent Railway Company; and in view of the settled rules that in the construction of grants of the public domain in cases of doubt the interpretation most favorable to the Government must be adopted, and as between rival claimants preference will be given to the actual settler, there seems to be reason calling for an enlarged construction of section 4 of the Act, so as to extend its benefits to persons who have become

purchasers of portions of the unearned lands after the date of the adoption of the Act."

Manley vs. Tow, 110 Fed., 241, 247-8-9.

Later, however, the trial Courts, basing the decision on an opinion of this Court adjusting rights under the Southern Pacific Railroad grant, felt impelled to hold that Section 4 of the adjustment Act applied to purchasers after as well as before the passage of the Act.

"Since the rendition of the opinion in *Manley vs. Tow*, the Supreme Court in the case of *U. S. vs. Southern Pac. R. Co.*, 22 Sup. Ct., 285, 46 L. Ed. 425, has given a construction to the Acts of February 12, 1887, and March 2, 1896, and holds that Section 4 of the Act of 1887 is not to be restricted to purchases made before the adoption of that Act, but will include transactions had before the final adjustment of the particular grant under the general provisions of the Act. In the opinion filed in the cited cases it is expressly stated that the question decided was one wholly between the Government and the purchaser from the Railway Company, as no third party was claiming title thereto, and the Court cites its prior decision in the case of *Winona & St. P. R. Co. vs. U. S.*, 165 U. S., 483, 17 Sup. Ct., 381, 41 L. Ed. 798, as a correct construction of the statute * * *.

As I construe these rulings of the Supreme Court in these cases, the meaning thereof is that in the settlement and readjustment of the railroad land grants, as provided for in the Acts of Congress under consideration, it is the legislative intent that the Government should act liberally with all persons who had in good faith purchased portions of the unearned lands from the Railroad Companies, and that the absolute or so-called technical right of the Government to insist upon the restoration to the public domain of all lands not earned by the Railway Company under the terms of the grant to it would be waived in favor of good-faith purchasers from the Railway Company, but that it is not the intent of these Acts to declare that the equities and rights of third parties shall be disregarded in favor of such purchasers. In

other words, when the issue is between individual claimants it was not the legislative intent to declare that purchasers from the defaulting Railway Companies of unearned lands should be favored over other good-faith claimants without regard being paid to the actual equities of such parties, but, on the contrary, in each case the respective rights of such contesting claimants should be settled according to well established and recognized rules of equity and public." Per Shiras, District Judge, in

Benner vs. Lane, 116 Fed., 407, 410-11.

Such cases as Southern Pacific Railroad Company vs. U. S., 184, U. S., 54, referred to in the quotation from Benner vs. Lane, supra, are distinguishable from the case at bar. Under the grant involved in that case the title to the land in controversy had been vested in the Railroad Company. Until, therefore, the grant had been adjusted under the Act of Congress of March 3, 1887, the Company could pass title; and a purchaser from it might be a bona fide purchaser under the adjustment Act. The supplemental adjustment Act of Congress of March 2, 1896, has no bearing on this controversy, as it has application only to lands patented or certified to the Company.

"The Act of 1896 refers only to lands patented or certified, and parties who contracted with the Company for unpatented lands must rely for protection upon the Act of 1887."

Southern Pac. R. Co. vs. U. S., 184, U. S., 54, 46 L. Ed., 425, 429. To the same effect see Clark vs. Herrington, 186 U. S., 206, 212.

The decision of the lower Courts, rendered prior to the opinion of this Court in Knepper vs. Sands, 194 U. S., 476, generally held in effect, that purchasers from the Railroad Company subsequent to the passage of the adjustment Act of March 3, 1887, could be bona fide purchasers under Section 4 of that Act. It was considered that one or the other of the contending parties, the homestead claimant or the purchaser from the Company, was legally entitled to the land; the determination as to which was the rightful owner being dependent on the actual equities, based on settlement

and occupation and actual notice of the status of the title. See

Linkeswiler vs. Schneider, 95 Fed, 203;

Manley vs. Tow, 110 Fed., 241;

Benner vs. Lane, 116 Fed., 407;

Brett vs. Meisterling, 117 Fed., 768.

Since the decision in Knepper vs. Sands, *supra*, it seems to be generally conceded by the lower Courts that a purchaser from the Company after the passage of the adjustment Act, could have no claim to the land as a bona fide purchaser under Section 4, as against the United States. Where, however, the purchaser is in possession and occupancy, it is held that his confirmatory patent cannot be attacked by a homestead claimant who has neither gone into possession and occupancy of the land at a time when it was unoccupied by another, nor entered it by homestead filing tendered to and accepted by the proper officers of the Land Department. See

Ostrum vs. Wood, 140 Fed., 296;

Harvey vs. Bolles, 160 Fed., 531;

McKenna vs. Atherton, 160 Fed., 547;

Linebeck vs. Vos, 160 Fed., 540;

Lyle vs. Patterson, 160 Fed., 543, affirmed 176 Fed., 909;

Dockendorf vs. Bassett, 160 Fed., 545, affirmed 176 Fed., 917.

It would seem to be settled by the decision of this Court last above cited, that Section 4 of the adjustment Act of Congress of March 3, 1887, has no application to the unearned lands a tract of which is in controversy. In that case it is said, opinion by Mr. Justice Harlan:

"When the adjustment Act of 1887 was passed, the title of the United States to the unearned lands, including the particular lands here in dispute, was complete and perfect. No interest then remained in the State or in the Railroad Company requiring an adjustment; for, as stated, the State had relinquished all its claim, and the Railroad Company had received all the lands it was entitled to demand for constructed road. When, therefore, Congress made provision in the fourth section of the Act of 1887 for the

protection of those who in good faith had purchased from any 'grantee company,' to whom lands had been erroneously certified or patented, it could not have intended to refer to purchases made from the Railroad Company, after that Act took effect, of lands originally certified or patented to the State and not to the Railroad Company, and the legal title to which was in the United States at the date of the passage of the Act. A chief purpose of the Act of 1887 was to declare forfeited unearned lands and restore them to the public domain, and not to give third parties and speculators an opportunity to purchase such lands from companies which had defaulted in the work of construction and to whom the State had never conveyed, and thereby obtain a preference over actual settlers in possession. The policy of the Government has always been favorable to actual settlers. As late as *Ard vs. Brandon*, 156 U. S., 537, it was said that 'the law deals tenderly with one who, in good faith, goes upon the public lands, with a view of making a home thereon.' See also *Northern Pacific Railroad vs. Amacker*, 175 U. S., 564; *Moss vs. Donovan*, 176 U. S., 413; *Rector vs. Gibson*, 111 U. S., 276; *Nelson vs. Northern Pacific Railway*, 188 U. S., 108, 123.

We are of opinion that the fourth section of the adjustment Act of 1887 has no reference to any unearned lands purchased after the date of that Act from a Company to whom they had never been certified or patented, although, if it had kept its engagement with the State and completed the road, in due time, it could have acquired an interest in them; and that, as the State by legislative enactment, had resumed the title it acquired from the United States, and afterwards relinquished its interest to the United States—all before the passage of the adjustment Act—the appellant could not, within the meaning of the Act, and after its passage, have become a purchaser in good faith of the lands here in dispute. The sale by the Railroad Company to the appellant was a sale of something it did not possess, a mere device to bring its purchaser within the provisions of the adjustment Act of 1887 when the Act was never intended to apply to such a case."

Knepper vs. Sands, 194 U. S., 476, 484-5-6. See also

Logan vs. Davis, 147 Iowa, 441, 124 N. W., 808.

The Land Department, therefore, erred in its construction of the law in issuing a confirmatory patent for the land in controversy to appellee, George W. Patterson. This being so, it is within the province of the Courts to rectify the error and divest the title of the patentee.

26 Am. & Eng. Encyc. of Law, 2nd Ed., 389, 397-8, tit.

State and Public Lands, and cases cited.

As has been already shown the patent to the land in controversy issued under Section 4 of the adjustment Act. The contention is made by counsel for the appellees, that even if erroneously issued under that section, it can be sustained under Section 5 of the Act; that the patentee possessed every qualification required by the latter section. But there exists no reason or authority for such contention.

"As I construe Section 5, it was intended thereby to give the preference to claimants under the homestead and pre-emption laws, whose rights of occupancy were in existence at the date of the purchase from the Railway Company, as to all unearned lands the title to which had not been conveyed to the Company, or, for its use, to some third party. To give the preference to the purchaser under the provisions of this section, it must appear that at the date of the sale to him by the Railway Company the title to the land purchased had been conveyed by the United States to the Company, or to some one for its use and benefit. A conveyance by the United States of land to a third party as a trustee, to be held by the trustee in order to ascertain whether the Railway Company will earn the lands, it being the duty of the trustee to reconvey the lands to the United States if the conditions of the grant are not performed, is not a conveyance to the Company or for its use, within the meaning of Section 5 of the readjustment Act."

Per Shiras, District Judge, in

Manley vs. Tow, 110 Fed., 241, 251. Followed

Benner vs. Lane, 116 Fed., 407.

"The right of the Railroad Company to the lands in dispute and its liability to be deprived thereof both depend upon the granting Act of May 12, 1864. They are therefore subject to the operation of that grant, had reverted to the State or to the United States before the passage of the Act of March 3, 1887, and Section 5 of that Act no more applies to such lands than would Section 4. The patent to John Wood is not based upon Section 5. He has never paid or offered to pay to the United States the Government price for like land. The local land office expressly awarded the land to him under Section 4 of the Act of March 3, 1887. The Secretary of the Interior approved of this, and awarded a patent to him, confirming the title he obtained from the Railroad Company, without requiring him to pay the Government price for like land. In no event could a patent lawfully issue under Section 5 without such payment." Per Reed, District Judge, in

Ostrum vs. Wood, 140 Fed., 294, 299-300.

(3) The appellee, George W. Patterson, had no contract of purchase with the Company when the contest was had in the Land Department which resulted in the issuance of his patent. While the suit by the United States against the Company to quiet title to the unearned lands was pending, Mr. Patterson agreed in writing with the Company that should the decision be adverse to the Company he would surrender his contract, and accept the amount paid thereon in full settlement of all claims suffered by reason of the failure of title. (Transcript, p. 186.) The contingency happened.

After this modification was entered into, the appellee was no longer a purchaser in any proper sense. Liberally constructed, it might be said to be an option but nothing more. Strictly speaking, the Railroad Company had sold nothing and the defendants had bought nothing. As it developed the defendants had only a contract fixing the amount they might recover from the Railroad Company. The Company knew at the time the pretended sale was made that it was a mere speculation; it knew that it had nothing to sell, and it knew that it had sold nothing at the time

that the modification was entered into. With reference to this modification it is said in a decision of the Land Department:

"Conceding for the sake of argument that the original contract evidenced a purchase from the Company, and that it is otherwise shown that Olson acted in good faith and was duly qualified as required, the supplementary contract clearly provided for annulling and surrender of the original contract, and an abandonment of Olson's rights thereunder on the happening of a stated contingency and for the payment to him of liquidated sum for said surrender and abandonment. After the Supreme Court, on October 21, 1895, decided that the Company had no title to the land, under the terms of the supplementary contract and within the time fixed therein, in contemplation of law, the abrogation and annulment of the first contract and the abandonment of Olson's rights thereunder became fixed, determined and complete. In lieu thereof he had only the supplementary agreement which does not evidence a purchase by him from the Company but an annulment of the claim of purchase."

Olson vs. Traver, 26 L. D., 350, 353.

It is true the Land Department afterwards reversed its ruling on the effect of such supplementary contract (*Burton vs. Dockendorf*, 29 L. D., 479); and this later decision is in accord with that of Shiras, District Judge, in *Linkswiler vs. Schneider*, 95 Fed., 207, 210. But where the original contract had been thus voluntarily relinquished and abandoned by the purchaser, there would not seem to be any equities in his favor warranting relief under the adjustment Act.

(4) The patent to the appellee, George W. Patterson, recited its issuance to him as a bona fide purchaser under Section 4 of the adjustment Act of Congress of March 3, 1887. It was issued on March 23, 1901, and recorded in O'Brien County, Iowa, on April 15, 1901. (Transcript, pp. 82, 93.) Until the date of its issuance the land included in it remained subject to the jurisdiction of the Land Department; and the Courts were without power or authority to entertain suits concerning it which involved adjudicating title as distinguished from the right of present possession.

26 Am. & Eng. Encyc. of Law (2nd Ed.), 384, et seq., tit., State and Public Lands.

On January 31, 1901, and prior to the date of the issuance of the patent to appellee, George W. Patterson, he conveyed the premises in controversy to appellees, T. H. Smith and W. M. Smith, jointly, and they on March 31, 1901, a few days after the patent had issued, conveyed to appellee, Thomas Beacom. Said Thomas Beacom held the legal title at the date of the commencement of the lis pendens of this suit, to-wit, May 24, 1901. (Transcript, pp. 91-93.)

The record of the contest in the Land Department over the land in controversy shows that Thomas Beacom is a brother of James A. Beacom, one of the contestants; that he was familiar with the land in controversy, and had leased part of it from George W. Patterson as early as the year 1895; that while he was in as tenant, the brother, James A. Beacom, went into possession, and later claimed the land under the adjustment Act and the homestead law in opposition to the claims of George W. Patterson and others. Thomas Beacom was also one of the persons who by force and threats interfered with the settlement of appellant on the land. (Transcript, pp. 181-2, 185, 214.) It is apparent from the record of the contest that Thomas Beacom had actual notice of the conditions surrounding the title, and was taking an active interest in the matter of the possession of the land. The brother James A. Beacom maintained against Patterson, the possession he had taken while Thomas Beacom was in as tenant of Patterson (Transcript, p. 182), and for a time prosecuted a claim of title based on the possession. Eventually, however, he dropped out of the contest and the title passed to Thomas Beacom at the time and in the manner hereinbefore described.

II. THE APPELLANT WHO SOUGHT TO SETTLE UPON THE LAND AS A HOMESTEAD AND TO ENTER IT AS SUCH PURSUANT TO THE PROCLAMATION OF THE LAND DEPARTMENT OF NOVEMBER 18, 1895, HAS DONE EVERYTHING WITHIN HIS POWER

TO DO, BOTH IN THE LAND DEPARTMENT AND IN THE COURTS, TO SUSTAIN AND DEFEND HIS RIGHTS UNDER SAID PROCLAMATION, AND IS ENTITLED TO RECOVER THE LAND FROM THE APPELLEES.

(1) The possession of the premises in controversy prior to the date of the contest in the Land Department, the hearing in which commenced on May 13, 1896, is aptly characterized as a scrambling possession. Briefly stated the evidence of possession, as shown by the record of the contest, is that the tract was unbroken prairie, vacant and unoccupied, in the year 1883, except for some fire breaking by one A. D. Bloom; that about the year 1884, said Bloom broke out about half an acre with a view of homesteading the tract if it should go back to the Government; that one Stevenson started to break on the land in 1884 and was stopped by Bloom; that J. H. Pasco, the contract purchaser from the Railroad Company, in June, 1887, broke the balance of the tract and built a shanty on it; that during the period while Pasco was claiming the land, one Charles Dougherty built a house on it, afterwards moving off pursuant to a settlement between him and Pasco of an action involving the right of possession; that George W. Patterson as the successor in interest under the Pasco contract, leased the land to tenants during the years 1890 to 1895, both inclusive; that while Thomas Beacom was in as such tenant, his brother James A. Beacom moved into the shanty built by Pasco and laid claim to the land; that at the time James A. Beacom moved on the land, Thomas Beacom as tenant of Patterson had a crop of corn thereon which James A. Beacom helped him to gather; that appellant settled on the land on October 22, 1895, the same day that James A. Beacom took possession of the Pasco or Patterson shanty, and two days later his house was moved off by the Beacoms and others; that Patterson moved the Pasco shanty off the land about March 20, 1896, while James A. Beacom was absent, and the latter built another a few days later; that appellant again moved on the land on March 20, 1896, and con-

tinued living on it until April 13, 1896, when his house was removed by the Sheriff under a writ issued out of an action brought by James A. Beacom for possession, which action was pending on appeal at the time of the contest. Neither Pasco nor Patterson ever lived on the land. Patterson was a banker living at Ashton, Iowa, in the immediate vicinity of the unearned lands in O'Brien County, and traded Pasco some cattle for his interest in the contract from the Company. (Transcript, pp. 170 to 243.) Patterson testifies as to the possession of the land in 1896 just prior to the date of the contest, as follows:

Q. Is there any one now holding it under lease? A. No sir.

Q. Who is farming it? A. Thos. Beacom and I understand Lyle put some in and I put some in myself. (Transcript, p. 185.)

A. D. Bloom claimed rights in the tract by virtue of his early breaking and continued use of a small portion of it, at the date of the contest.

(2) On November 18, 1895, the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, issued to the Register and Receiver at Des Moines, Iowa, a proclamation or letter of instructions, regarding the disposal of the unearned lands including the tract in controversy. The proclamation was duly acted upon by the local officers and notice of it published. (Transcript, pp. 80, 81.) It contained among other provisions the following:

"In order to carry their (the lands) restoration to entry into effect, you will cause to be published for a period of thirty days, in some newspaper of general circulation in the vicinity of the lands, a notice that said lands, a particular description of which will be published with the notice, are restored to the public domain and will be subject to entry on a day to be fixed by the notice which shall be ninety (90) days from the date of the first publication, and that all persons claiming any part thereof under the Act of March 3, 1887 (24 Stat. 556), must come forward within the ninety days immediately following the first publication, and give notice of their claim by publishing their notice of intention

to make proof in accordance with the requirements of the circular of February 13, 1889 (8 L. D., 348), upon a day which shall be subsequent to that affixed for the restoration.

To the end that complications that might arise from the former practice of suspending applications for these lands may be avoided, and the rightful claimants be enabled to acquire title with as little delay as possible, I have to direct that in the notice of restoration there be inserted a notice to all prior applicants, that their applications confer no rights upon them, and that upon the day set by you for the restoration, the land will be open for entry and disposal without regard to such applications, which shall be held by the notice to be rejected.

That all such applicants may, however, have opportunity to present new applications upon the expiration of the ninety days' notice, you will notify specially all parties shown by your records to have pending applications for these lands, of the rejection thereof, of the date of the restoration, and of the necessity of presenting new applications for the protection of their rights.

In all cases of conflicting claims you will proceed in accordance with the rules of practice in contest cases." (Transcript, pp. 156 to 158.)

Pursuant to the above proclamation, and the notices published and otherwise given under its provisions, several persons filed applications for the tract of land in controversy, among them the appellee, George W. Patterson, claiming under the adjustment Act as a purchaser from the Railroad Company; A. D. Bloom claiming under the adjustment Act, and later under homestead application filed May 12, 1896; James A. Beacom claiming under the adjustment Act, and later under homestead application filed May 12, 1896; appellant Roscoe Lyle, claiming under homestead applications filed February 24, 1896, and again on March 24, 1896; and Louis Hoffman, claiming under homestead application filed February 27, 1896. Other persons filed homestead applications on February 27, 1896, but did not appear at the contest to defend their rights, but made default. (Transcript, pp. 81; 37 to 39;

163-4.) The contest proceeded before the local officers between the parties above named. On April 21, 1897, the Register and Receiver rendered a decision to the effect that no rights had been acquired by Patterson or any other applicant under the adjustment Act; that Beacom had exhausted his rights under the homestead law and could not enter the land; that tract was vacant Government land on February 27, 1896, and Louis Hoffman having filed the first legal application on that day was entitled to enter it. (Transcript, pp. 37 to 39.) Bloom took no appeal from the decision, and as stated by the Commissioner in passing on the record on appeal, "said decision is therefore final and his case is closed." (Transcript, p. 249.) Beacom appealed to the Commissioner, but on May 29, 1897, withdrew his appeal and moved for a re-hearing before the Register and Receiver for the purpose of excusing his forfeiture of right to enter another homestead, and have the right re-instated under the Act of Congress of December 29, 1894 (28 Stat. 599). The motion came before the Commissioner with the appeal; and he rejected all applications except those of Lyle and Beacom, and held that Beacom was entitled to a re-hearing to prove his right to a second entry, the hearing to be solely between him and Lyle. (Transcript, pp. 245 to 251.) There is nothing in the record to show that James A. Beacom ever had a re-hearing or that anything further was done by him to establish and preserve his rights. Lyle, Hoffman and Patterson filed separate appeals with the Secretary from the decision of the Commissioner denying their applications. The Secretary decided in favor of Patterson and allowed his application for a confirmatory patent under Section 4 of the adjustment Act of March 3, 1887. Under this decision the title passed from Patterson, through T. H. Smith and W. M. Smith, to Thomas Beacom, as hereinbefore stated. Soon after the issuance of the patent the appellant, Lyle, commenced this suit to recover the land. Louis Hoffman, who also contested his right to enter the land to final decision in the Land Department, intervened in the suit, but did not prosecute any appeal from the adverse decision of

the trial Court. (Transcript, pp. 33, et seq.; 257, et. seq.) He is therefore wholly eliminated from this controversy, leaving appellant as the only qualified entryman under the facts in the cause. At the time of his application to enter the land he was a young man, 24 years of age, seeking to establish a home for himself on part of the public domain, at the invitation of the Government. The appellee George W. Patterson was a banker and was merely speculating in the land. He traded for the interest claimed by Pasco under the contract with the Railroad Company, never resided on the land and never improved it. (Transcript. pp. 173, 183, 213.)

"The obvious purpose of the pre-emption and homestead laws of the United States is to secure to the actual settler the land upon which he has settled, and to give him the prior right to perfect title by purchase or continued occupation. While, undoubtedly, under the provisions of the statutes and the regulations of the Land Department, there are opportunities for a speculator to obtain title to public lands, it must always be remembered that in the eye of the public land laws of the United States the speculator is never the object of favor. Pre-emption and homestead laws were enacted for the benefit of the actual settler, and to that end they should be construed and administered."

Moss vs. Donovan, 176 U. S., 413; 44 L. Ed., 526.

"The policy of the Federal Government in favor of settlers upon public lands has been liberal. It recognizes their superior equity to become the purchasers of a limited extent of land, comprehending their improvements, over that of any other person."

Clements vs. Warner, 24 How (U. S.), 394, 16 L. Ed., 695, 696.

Similar language by this Court in a case involving a tract of these unearned lands, has already been quoted herein, from the opinion in *Knepper vs. Sands*, 194 U. S., 476, 485.

(3) Much has been said in argument before the lower Courts about the inability of appellant to initiate a right to the land by settlement, in view of the evidence of the possession of George W.

Patterson and James A. Beacom. The scrambling character of that possession has been already alluded to herein. Furthermore neither Patterson nor Beacom had or made any claim which entitled him to the possession at the time the appellant settled on the land or at the time he made application to enter it as a homestead. It also appears from the evidence of Mr. Beacom himself, that his possession was not such as the homestead law requires. He testifies as follows:

Q. When did you first establish a residence on the land?

A. On the 22nd day of last October.

Q. What did you do at that time?

A. I went there and stayed there quite a while every night, and then I went off for awhile; I stayed there about half the time until this spring; I guess I have been there, probably five or six nights in the week; *and then I would go home.* (Transcript, p. 198.)

Q. Have you cooked and eaten your meals in that shanty on those premises?

A. Yes, sir.

Q. How often?

A. Not very often, there is a place right across the road where I board most of the time. (Transcript, p. 202.)

James A. Beacom made no claim to the land as a homestead until shortly before the date of the contest in the Land Department, he having filed his homestead application on May 12, 1896, and subsequent to the filings of appellant. (Transcript, pp. 20; 81.) Such possession as his evidence shows him to have had, does not constitute a settlement such as the homestead law requires. Similar evidence has been denounced by the Circuit Court in the following language:

"It would be a very severe strain upon the liberality of the Homestead Act to extend its protection to complainant, who really never made an earnest effort to establish his actual home upon the place to the exclusion of any other home. He seems to have had the notion that 'representation' would do, and that this was pos-

sible by occasional visits to the place, followed by some slight evidences of occupancy and cultivation. I do not believe that such acts constitute that good faith demanded of one who claims as a homesteader. Inhabitation is always required, and surely it is not a compliance with the law for a man to file on a tract of land with no intention of making it his home, with no purpose of living there, with no intention of cultivating the place and of acquiring it for a place to reside in. Occasional visits made for a day or two every few months, when such visits are made solely for the purpose of complying technically with the law, do not constitute a compliance with the statute. To establish a residence under the homestead laws, there must be a combination of act and intent, the act of occupying and living upon the claim and the intention of making the place a home to the exclusion of a home elsewhere." Per Hunt, District Judge, in

Whaley vs. Northern Pac. Ry. Co., 167 Fed., 664, 669-70.

It must be possible to initiate a right under the homestead law by application to enter the land as well as by settlement upon it. Otherwise a person by simply going into possession of a tract, might prevent the acquisition of rights by qualified homesteaders for an indefinite period, though he is not a settler in good faith and can acquire no rights himself. The decisions of the Courts and of the Land Department are in accord with the view that the entry and not the settlement is the main factor in determining rights under the general homestead law. In a comparatively recent case in this Court that law is reviewed in the following language:

"The homestead law was enacted on May 20, 1862 (12 Stat. at L., 392, chap. 75). By that Act, differing from the pre-emption law, the rights of the settlers only attached to the land from the date of the entry in the proper land office. Maddox vs. Burnham, 156 U. S., 544, 546. * * * It was not until May 14, 1880 (c. 89, 21 Stat., 141), that a homestead entry was permitted to be made upon unsurveyed public land. The statute which operated this important change moreover modified the homestead law in an important particular. Thus, for the first time both as to the

surveyed and unsurveyed public lands, the right of the homestead settler was allowed to be initiated by and to arise from the act of settlement, and not from the record of the claim made in the Land Office. These results arose from Section 3 of the Act, reading as follows:

'Sec. 3. That any settler who has settled or whom shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States Land Office as is now allowed to settlers under the pre-emption laws to put their claim on record, and his right shall relate back to the date of settlement the same as if he had settled under the pre-emption laws.' See *Maddox vs. Burnham*, *supra*.

Both under the pre-emption law and under the homestead law, after the Act of 1880, the rights of the settler were initiated by settlement. In general terms it may be said that the pre-emption law (Rev. Stat. Sections 2257-2288), as a condition to an entry of public lands, merely required that the appropriation should have been for the exclusive use of the settler, that he should erect a dwelling house on the land, reside upon the tract and improve the same. By the homestead law residence upon and cultivation of the land was required. Under neither law was there a specific requirement as to when the improvement of the land should be commenced or as to the nature and extent of such improvement, nor was there any requirement that the land should be enclosed." Per Mr. Justice White, in

St. Paul, Minn. & Man. Ry. Co. vs. Donohue, 210 U. S., 21, 29-30-31, affirming 101 Minn. 239.

While the right to acquire title under the homestead laws might be thus initiated by settlement after the Act of 1880, the entry must be applied for within the limited statutory time after settlement, or after survey if the tract was unsurveyed when settlement was made. In other words the entry must be applied for in due course,

otherwise the right acquired by settlement may be lost by other disposition of the land, either by Congress or by the Land Department.

In a decision involving the Northern Pacific grant, in favor of a homestead claim, it is said by this Court, opinion by Mr. Justice Harlan:

"As the Railroad Company had not acquired any vested interest in the land when Nelson went upon it, his continuous occupancy of it, with a view, in good faith, to acquire it under the homestead laws as soon as it was surveyed, constituted, in our opinion, a claim upon the land within the meaning of the Northern Pacific Act of 1864; and as that claim existed when the railroad company definitely located its line the land was by the express words of that Act, excluded from the grant. * * * There is no conflict between the decision now rendered and Northern Pacific Railroad vs. Colburn, 164 U. S., 383; for as appears from the opinion and record in that case, the land there claimed to have been occupied by a homestead settler, at the date of definite location, was surveyed public land, and the good faith of the occupation was not manifested by an entry, or an attempt at entry, at any time in the local Land Office. It was held that the inchoate right of the homesteader must be initiated by a filing in the Land Office. In the present case, as we have seen, the land occupied was unsurveyed, and at the time of such occupancy, the land being unsurveyed, there could not have been any filing or entry in the Land Office."

Nelson vs. Northern Pacific Ry., 188 U. S., 108, 122; 132-3, reversing 22 Wash., 521.

In the same case the opinion quotes with approval the following from the decision of Secretary Teller in Southern Pacific Railroad (Branch) vs. Lopez, 3 L. D., 130:

"I need not recite the numerous decisions of the Courts and of the Land Department, which settle the principal that under the homestead law it is the 'entry' which reserves land (except for the short period during which it is reserved by settlement under the Act of May 14, 1880), and not any occupation by the claimant before or after it."

Nelson vs. Northern Pacific Ry. 188 U. S., 108, 127, reversing 22 Wash., 521.

"The pre-emption laws were distinguished from the homestead laws by the fact that the homestead laws do not contemplate an actual occupation of the land prior to the filing of the original entry; whereas, the pre-emption laws did contemplate an actual occupation prior to the filing of the claim. Under the pre-emption laws the party was required to make his claim within 30 days after the date of his occupancy of the land, and within one year thereafter was required to make final proof and payment, failing in which the land became government property. * * * * *

One who takes possession of land with a view of becoming an entryman under the homestead law is a mere 'squatter,' except as to the limited statutory time allowed him preceding actual entry at the Land Office, and except during that brief statutory period he has no rights whatever that either the Government or any other person is bound to respect. Any other person could file his entry by making the requisite proof and paying the statutory fees, and would have all the rights under the homestead statute which, followed by possession and a compliance with the law, would carry the land to a patent to him."

U. S. vs. Bagnell Timber Co., 167 Fed., 795, 798-9.

"Plaintiff obtained no homestead rights under his settlement in 1884. Mere occupation and cultivation, without compliance with the law requiring that he record his claim by an entry at the local Land Office within three months of the date of his settlement, was insufficient to defeat the complete right of the Railroad Company, under its grant, to select this particular tract of land for indemnity purposes. McHenry vs. Nygaard, 72 Minn., 2, 74 N. W., 1106. So that plaintiff had no claim thereto, as against the Company, when, in June, 1885, it filed a list of indemnity selections, embracing the tract in question, in the proper Land Office. He had not complied with the express provisions of the homestead law, fixing the time within which it was incumbent upon him to place his claim on record by filing his application and making entry, and

had forfeited any right by virtue of his settlement. *Maddox vs. Burnham*, 156 U. S., 544, 39 L. Ed., 527."

Sjoli vs. Dreschel, 90 Minn., 110, 95 N. W., 763, 764, reversed on other grounds, 199 U. S., 564.

(4) In the disposition of the conflicting claims by the Land Department, the right of homestead claimants to make such settlement as the law requires, notwithstanding the purchaser from the Railroad Company was at the date of the settlement exercising possessory rights, was not questioned. As between the homestead claimants it was simply a question of qualification and of priority. On appeal from the Commissioner to the Secretary, the latter does not in any manner question the correctness of the findings of the former on the questions of fact relating to the sufficiency of the acts of appellant in making the homestead settlement or the manner in which he took and kept possession; and those findings stand as a final adjudication of the questions of fact in the contest, binding upon the appellees, and establish appellant's privity with the Government as a homestead settler and his right to the land and to have his title protected in a court of equity. After stating the facts the Commissioner says regarding the respective rights of appellant and Louis Hoffman, another homestead claimant:

"It would be inequitable and unjust to permit the absence (of appellant from the land) prior to February 27th, 1896, virtually by duress, to defeat his claim against Hoffman, who has always been a stranger to the land in the matter of any settlement or improvement." (Transcript, p. 249.)

It is true the Secretary reversed the decision of the Commissioner, but the reversal was on a question of law. The Secretary held erroneously that appellee, George W. Patterson, was a bona fide purchaser within the terms of the adjustment Act of March 3, 1887, and entitled to the land as such purchaser. (Transcript, pp. 245 to 253.) In the course of his opinion the Secretary says:

"The record history and the facts in the case, upon examination of the record, are found to be substantially as stated in the decision of your office and need not now be recited." (Transcript, p. 252.)

If the settlement of appellant was wrongful because of the prior occupancy the character of which has been already described herein, so was that of James A. Beacom also. But such prior occupancy was without any legal basis and was also wrongful; and so far as the respective rights of appellant and appellees are concerned, no question of prior possession of the land should be now considered.

"It is said that defendant obtained possession of said land by trespass, and because thereof he can base no homestead rights thereon. If it be conceded that the defendant's original possession of the particular land in controversy in 1890 was obtained by a trespass, it does not follow that he could thereafter obtain no homestead rights. At the time of the trespass, he simply invaded the wrongful possession of another."

Logan vs. Davis, 147 Iowa, 441, 127 N. W., 808, 812.

The failure of James A. Beacom and of Louis Hoffman to pursue their remedies leaves the appellant as the only homestead claimant. The rights of other contestants, if any they had, have been lost by acquiescence in the decisions of the Land Department and the lower courts. In a case in this Court involving a claim of homestead based on a rejected application to enter the land, the applicant never having settled upon it, the syllabus and that portion of the opinion from which it is derived, read as follows:

"Where it does not appear that one claiming to have entered land prior to its withdrawal under a land grant had done all that was possible to perfect his entry, and had either taken possession or otherwise not acquiesced in the decision, the attempted entry is not sufficient to take the land from the jurisdiction of the Secretary of the Interior so as to prevent him from certifying it under the grant as unappropriated lands of the United States. (Syllabus.)

* * * The statement shows no such facts as put Donovan in the place of one who, having done all he could to enter the land, had been refused such entry, but had nevertheless not acquiesced in such decision, and had taken possession of it as a homestead. On the contrary, Donovan did acquiesce in that decision, and amended his application."

United States vs. Chicago, etc., Ry. Co., 195 U. S., 524, 537, affirming 116 Fed., 969.

Appellant did all within his power to do to establish a settlement on the land. Afterwards he filed application to enter it as a homestead under the invitation of the Government extended by the letter of instructions or proclamation of the Land Department of November 18, 1895, hereinbefore discussed. The contest in the Department provided for by the proclamation followed; and appellant has continuously and to the full asserted his rights as a homestead applicant against the decision of the Department, erroneous in law, which denied the claim of homestead and upheld that of succession from the Railroad Company. The case made by appellant falls within the reasoning and logic of the decisions of the Courts, in favor of claimants whose applications have been wrongfully rejected by the Department.

In a leading case in this Court, it is said, opinion by Mr. Justice Brewer:

"The question, therefore, is whether the cases disclose equitable rights in the defendant superior to the claim of the Railway Company. If his rights are only those which spring from his pre-emption entry and subsequent occupation of the lands it may well be, as held by the Supreme Court of the State, that the decision of the Land Department upon the questions of fact are **conclusive** against him. But we are of the opinion that the testimony shows a right anterior to his pre-emption entry—a right of which he was deprived by the wrongful acts of the local land officer, and which he did not forfeit or lose by virtue of his subsequent efforts to pre-empt the land. According to this testimony he had commenced improving the premises prior to July 14, 1866. He was qualified under the laws of the United States to make a homestead entry. The land was not within the place limits of either road, and had not been withdrawn by the Land Department from entry and settlement, for the orders of withdrawal were not made until March 19 and April 30, 1867. He had, therefore, on July 14, when he went to the Land Office, the right to enter the entire 160 acres

as a homestead. This right he demanded. He made out a homestead application for the land described, tendered the application and the land office fees to the Register of the Land Office, but the Register rejected the application, giving as a reason therefor that the land was within the granted limits of the Leavenworth, Lawrence & Galveston Railroad, and was double minimum lands, and that 80 acres was the limit of a homestead entry of such lands. As to this matter of fact the Register was mistaken, and his rejection of the application was wrongful, and denied to defendant that homestead entry which under the law he was entitled to. In the case of *Shepley vs. Cowan*, 91 U. S., 330, 338, this Court said after referring to the cases of *Frisbie vs. Whitney*, 9 Wall., 187, and *Yosemite Valley Case*, 15 Wall., 77:

'But whilst, according to these decisions, no vested right as against the United States is acquired until all the prerequisites for the acquisition of the title have been complied with, parties may, as against each other, acquire a right to be preferred in the purchase or acquisition of the land, when the United States have determined to sell or donate the property. In all such cases, the first in time in the commencement of proceedings for the acquisition of the title, when the same are regularly followed up, is deemed to be the first in right. So in this case, Chartrand, the ancestor, by his previous settlement in 1835 upon the premises in controversy, and residence with his family, and application to prove his settlement and enter the land, obtained a better right to the premises, under the law then existing, than that acquired by McPherson by his subsequent state selection in 1849. His right thus initiated could not be prejudiced by the refusal of the local officers to receive his proofs upon the declaration that the land was then reserved, if, in point of the fact, the reservation had then ceased. The reservation was asserted, as already mentioned, on the ground that the land was then claimed as a part of the commons of Carondelet. So soon as the claim was held to be invalid to this extent by the decision of this Court in March, 1862, the heirs of Chartrand presented anew their claim to pre-emption, founded upon a settlement of their ancestor.'

Within the authority of that case we think the defendant has shown an equity prior to all claims of the Railway Company. He had a right to enter the land as a homestead; he pursued the course of procedure prescribed by the statute; he made a formal application for the entry and tendered the requisite fees, and the application and fees were rejected by the officer charged with the duty of receiving them—and wrongfully rejected by him. Such wrongful rejection did not operate to deprive defendant of his equitable rights, nor did he forfeit or lose those rights because, after this wrongful rejection, he followed the advice of the Register and sought in another way to acquire title to the lands. The law deals tenderly with one who, in good faith, goes upon the public lands, with a view of making a home thereon. *If he does all the statute prescribes as the condition of acquiring rights, the law protects him in those rights*, and does not make their continued existence depend alone upon the question whether or no he takes an appeal from an adverse decision of the officers charged with the duty of acting upon his application. * * * There can be no question as to the good faith of the defendant. He went upon the land with the view of making it his home. He has occupied it ever since. He did all that was in his power in the first instance to secure the land as his homestead. That he failed was not his fault; it came through the wrongful action of one of the officers of the Government. * * * A rightful application was wrongfully rejected. This was not a matter of advice but of decision. Doubtless the error could have been corrected by an appeal, and perhaps that would have been the better way; but when, instead of pursuing that remedy, he is persuaded by the local land officer that he can accomplish that which he desires in another way—a way that to him seems simpler and easier—it would be putting too much of rigor and technicality into a remedial and beneficial statute like the homestead law to hold that the equitable rights which he had acquired by his application were absolutely lost."

Ard vs. Brandon, 156 U. S., 537, 541-44, reversing 43 Kan. 419, 425. See also Brandon vs. Ard, 211 U. S., 11, affirming 74 Kan., 424, 118 Am. St. Rep., 321.

In a later case the facts were that the claimant, being duly qualified under the homestead laws, settled on the land in May, 1883, and thereafter continued to occupy it as a home. In July of that year and soon after the filing of a plat of the survey of the land, he went to the Land Office to file on it, and was informed that protests had been made against the survey; and, acting on the advice of the land officer he did not file. In August, 1884, he learned that the State was claiming the land under the Swamp Land Act of Congress. He then applied to enter it under the homestead laws, and tendered the necessary fees, but the application was rejected. He filed a contest and appealed from the rejection of the entry; and in January, 1885, while the contest and appeal were pending, the land, through mistake and inadvertence of the Land Department, was patented to the State. In sustaining the claim of homestead, it is said by the Court, opinion by Mr. Justice McKenna:

"Do the facts entitle the defendant in error to the relief awarded to him by the State Courts? It is now too well established to need argument to support, or a citation of authorities, that when a patent to obtained from the United States by fraud, mistake or imposition, the question thence arising becomes one of private right, and the Courts in a proper proceeding and in the execution of justice will divest or control the title thereby acquired, either by compelling a conveyance to the plaintiff or by quieting his title as against the defendants and enjoining them from asserting theirs. * * * The plaintiff in error, however, contends that the defendant in error cannot invoke this doctrine, because he is not in privity with the United States; that he has not proved or offered to prove it, or established, or alleged, even, in this case, the ultimate facts upon which alone his claim could be recognized, or its validity established. In other words that he has not made or has not offered to make, final proof.

This contention is attempted to be supported by the principles announced in *Bohall vs. Dilla*, 114 U. S., 47; *Sparks vs. Pierre*, 115 U. S., 408; *Lee vs. Johnson*, 116, U. S., 48. The principles

are that to enable one to attack a patent from the Government, he must show that he himself was entitled to it. It is not sufficient for him to show that there may have been error in adjusting the title to the patentee. He must show that by the law properly administered the title should have been awarded to him.

We do not question these principles; but they only mean that the claimant against the patent must so far bring himself within the laws as to entitle him, if not obstructed or prevented, to complete his claim. It does not mean that at the moment of time that the patent issued it should have been awarded to him. The acts performed by him may or may not have reached that completeness; may not have reached it and yet justify relief, as in *Ard vs. Brandon*, 156 U. S., 537, and in *Morrison vs. Stalnaker*, 104 U. S., 212. And because of the well established principle that where an individual in the prosecution of a right has done that which the law requires him to do, and he has failed to attain his right by the misconduct or negligence of a public officer, the law will protect him. *Lytle vs. Arkansas*, 9 How., 333.

It would be arbitrary to apply the principle to some acts and not to others; might destroy it utterly to require the performance of all. But we are indisposed to extend the argument, because we regard *Ard vs. Brandon* as decisive.

In that case the claimant against the patent, being qualified and entitled, offered to make final proof, and from the denial of the offer prosecuted appeals successively to the Commissioner and to the Secretary of the Interior and each was decided against him. In this case the defendant in error, also being qualified and entitled, offered to enter the land, which offer was denied, and against the claim of the State of Minnesota he instituted the contest which was pending in the General Land Office when the patent was issued by inadvertence and mistake, and his right thereby defeated. We do not regard the difference in the case substantial."

Duluth, etc., R. Co. vs. Roy, 173 U. S., 587, affirming 69 Minn., 552.

Other cases some of them already cited herein are cases in which the homestead claimant has been successful, though his application to enter the land had been rejected, he having continued to assert his claim to final decision in the Courts. See

Nelson vs. Northern Pac. Ry. Co., 188 U. S., 108, reversing 22 Wash., 521;

Sjoli vs. Dreschel, 199 U. S., 564, reversing 90 Minn., 110;

Osborn vs. Froyseth, 216 U. S., 571, affirming 107 Minn., 568;

Osborn vs. Froyseth, 105 Minn., 16.

In denying a claim of homestead because the claimant had failed to make application to enter the land, as the law requires, this Court, referring to *Ard vs. Brandon*, 156 U. S., 537, above cited, distinguishes it in the following language:

"This is not like the cases just decided in which the local land officer refused to receive an application which he ought to have received; neither is it one in which such officers failed to do anything which he ought to have done. No application was made for an entry."

Maddox vs. Burnham, 156 U. S., 544, 547.

It is respectfully submitted that the decisions appealed from are erroneous, and that the decree denying appellant relief should be reversed.

MADISON B. DAVIS,
SULLIVAN & GRIFFIN,
ALFRED PIZEY,

Solicitors for Appellant.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 167.

ROSCOE LYLE, APPELLANT,

vs.

GEORGE W. PATTERSON, T. H. SMITH, W. M.
SMITH, ET AL., APPELLEES.

APPELLEES' BRIEF AND ARGUMENT.

Statement of the Case.

The statement of the case as made by counsel for the appellant does not, in our opinion, present succinctly the questions involved nor set forth logically or chronologically all of the facts necessary to a clear conception and proper consideration of the questions involved, and we therefore controvert such statement of the case.

We beg leave to adopt in stating the case the language of the Circuit Court of Appeals, speaking through District Judge Munger, in announcing the opinion of that court:

"This case was tried in the court below upon an agreed statement of facts, from which it appears that, on May 12, 1864, Congress passed an act granting lands to the State of Iowa, to aid in the construction

of a railroad, from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux and the west fork of the Des Moines river, also, to said State for the use and benefit of the McGregor Western Railroad Company for the purpose of aiding in the construction of a railroad from a point in South McGregor, in said State, in a westerly direction, by the most practical route, on or near the forty-third latitude, until it shall intersect the said road running from Sioux City to the Minnesota State line, in the county of O'Brien, in said State, every alternate section of land, designated by odd numbers, for ten consecutive sections in width on each side of said roads, to which the right of pre-emption or homestead settlement had not attached at the time of the definite location of such roads, and where any such alternate sections, within said ten-mile limit, had not been sold or pre-emption or homestead settlements attached at the time of the definite location of the road thereon, the Secretary of the Interior was authorized to select as indemnity therefor other lands in alternate sections within limits of twenty miles of said roads.

"On April 20, 1866, the General Assembly of the State of Iowa accepted said grant, and on the 19th day of September, 1866, the Sioux City & St. Paul Railroad Company filed in the office of the Secretary of State of Iowa its acceptance of the grant of Congress and the acts of the General Assembly of the State of Iowa, relating thereto, upon the terms, conditions and limitations therein contained, and on the 27th day of September, 1866, the Sioux City & St. Paul Railroad Company commenced the location of its line of railroad in Sioux City, and on October 4, 1866, completed the location to the southern line of the State of Minnesota, in section 12, township 100, north range 41 west of the 5th P. M. On the 2d of April, 1867, said Sioux City & St. Paul Railroad Company certified to the map of location and filed the same in the office of the Secretary of State of Iowa, which was afterwards certified to by the Governor and Secretary of the State of Iowa, and filed in the office of the Secretary of the Interior of the United States, and the same was duly accepted by the Secre-

tary of the Interior as the basis for the adjustment of the land grant made to the State of Iowa. And the lands so granted to the State of Iowa within the odd-numbered sections within the limits of twenty miles on each side of said road, as located on said map, were withdrawn from sale or entry under the pre-emption and homestead laws, and the price of the even-numbered sections of land within the ten-mile limit was increased to \$2.50 per acre.

"In September, 1867, said map, together with letter of withdrawal, was received by the register of the land office at Sioux City, Iowa.

"In 1872 the Sioux City & St. Paul Railroad Company commenced the construction of its railroad from a connection with the St. Paul & Sioux City Railroad at the southern line of the State of Minnesota, at or near the southwest corner of section 31, township 101, range 40, on the southern line of said State of Minnesota, and constructed the same in a southerly direction to the town of Le Mars, in the State of Iowa, but did not construct its road between Le Mars and Sioux City but operated through trains over another line of road already constructed between said towns.

"Whenever ten consecutive miles of road were constructed the same was duly certified to the Secretary of the Interior and patents were issued by the United States to the State of Iowa for lands within the limits of the grant opposite the sections so constructed.

"The Chicago, Milwaukee & St. Paul Railroad Company, by certain acts of the Legislature of the State of Iowa, became the successor of the McGregor Western Railroad Company, and completed the construction of its road from McGregor to a point of intersection with the said Sioux City & St. Paul Railroad Company, and in 1879 the Chicago, Milwaukee & St. Paul Railroad Company commenced, in the Circuit Court of the United States, for the District of Iowa, an action against the Sioux City & St. Paul Railroad Company and certain officers and trustees of the State of Iowa, to have adjusted the rights to lands within the overlapping limits of the respective railroad companies. Said action was prosecuted through the Circuit and Supreme Courts of the United States, and in May, 1886, a decree was entered pur-

suant to a mandate of the Supreme Court, apportioning the lands between the two companies. The particular lands involved in this action were by said proceedings assigned to the Sioux City & St. Paul Railroad Company. Subsequently the State of Iowa, by its General Assembly, relinquished to the United States all the lands which had not been earned by the railroad companies under said grants.

"On March 3, 1887, Congress passed an act entitled 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes.'

"The first section of the act authorized and directed the Secretary of the Interior to immediately adjust in accordance with the decisions of the Supreme Court each of the railroad land grants made by Congress to aid in the construction of railroads, which had not theretofore been adjusted.

"The second section provided that, upon the completion of said adjustment, if it should appear that lands had been from any cause erroneously certified or patented by the United States for the use or benefit of any company claiming by, through or under grant from the United States, to aid in the construction of a railroad, the Secretary of the Interior should demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits, and if any such company should neglect or fail to reconvey within ninety days after such demand, it was made the duty of the Attorney General to commence and prosecute in the proper courts necessary proceedings to cancel all patents, certifications, or other evidence of title, theretofore issued for said lands, and to restore the title thereof to the United States.

"By the fourth section of the act it was provided that lands erroneously certified or patented, and which had been sold by the grantee company to citizens of the United States or persons who had declared their intention to become such citizens, the person or persons so purchasing in good faith, heirs or assigns, should be entitled to the lands so purchased upon

making proof of the fact of such purchase at the proper land office within such time and under such rules as might be prescribed by the Secretary of the Interior after the grants respectively should have been adjusted and patents of the United States should issue therefor, and should relate back to the date of the original certification or patent, and the Secretary of the Interior, on behalf of the United States, should demand payment from the company which had so disposed of such lands for an amount equal to the Government price of similar lands.

"By section 5 it was provided that, where any company should have sold to citizens of the United States or to persons who have declared their intention to become such citizens, as a part of its grant lands, not conveyed to or for the use of such company and such lands being the numbered sections described in the grant, and being coterminous with the constructed parts of said roads, and where the lands so sold were for any reason excepted from the operation of the grant to said company, it should be lawful for the *bona fide* purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents should issue therefor to said *bona fide* purchaser, his heirs or assigns.

"In February, 1873, the Sioux City & St. Paul Railroad Company selected the tract in controversy with other lands as and for a part of the lands inuring to it under said act of Congress of May 12, 1864, and filed a written list of said selection with the register and receiver of the land office at Sioux City, Iowa. Said officers, in March, 1873, allowed and approved the filing of said list and certified the same as being within the ten-mile limits of said grant and as being free and clear of homestead, pre-emption, State, or other valid claims, which list was duly transmitted to the Commissioner of the General Land Office.

"The Commissioner of the General Land Office, in June, 1873, approved the said selection and transmitted to the Secretary of the Interior a list embracing said tract of land.

"In the same month the Secretary of the Interior

approved said selection and certificate, and caused copies of such approved list to be filed with the register and receiver at Sioux City, Iowa, and with the Governor of Iowa, and in June, 1873, the United States issued to the State of Iowa, for the use and benefit of said Sioux City & St. Paul Railroad Company, a patent embracing the tract of land in controversy and other lands, as and for a part of the lands inuring to the State of Iowa, and said Sioux City & St. Paul Railroad Company, under said act of Congress of May 12, 1864.

"On or about the 21st day of May, 1887, one J. H. Pasco, then a citizen of the United States, purchased the land in controversy from the Sioux City & St. Paul Railroad Company, in consideration of certain payments made and to be made by said Pasco or assigns until the full sum of \$2,146.50 should be paid, and thereupon said Pasco entered into the possession of said land and made valuable improvements thereon. On July 17, 1889, said Pasco sold and assigned said contract for the purchase of said lands to the defendant, George W. Patterson, who immediately entered into the possession thereof and made lasting and valuable improvements thereon, and said Patterson and subsequent grantees have continued in the possession, occupation and cultivation of said land continuously since that date. In the agreed statement of facts it is said that, at the time Pasco and Patterson made their purchase of said land, they each believed in good faith that the said land had been earned by the said railroad company; they knew that the land was within the said ten-mile limits of said railroad constructed by the said Sioux City & St. Paul Railroad Company; but did not know that the railroad company had sold all the lands it had earned at the time of their said purchase, nor did they or either of them know that the railroad company had received indemnity lands by a patent from the State of Iowa of sufficient quantity, along with other lands that had been patented to said railroad by the State, to equal their entire earnings by reason of the construction of said railroad to Le Mars.

"In October, 1889, the United States commenced

an action in the Circuit Court for the Northern District of Iowa, against the Sioux City & St. Paul Railroad Company and others, to which action said Pasco and said Patterson were not parties, to quiet the title of the United States in and to certain lands, including those in controversy, for the reason that the same had not been earned by said Sioux City & St. Paul Railroad Company. Such proceedings were had that in October, 1890, said circuit court entered a judgment, quieting title to said lands in the United States, from which judgment an appeal was taken to the Supreme Court of the United States and said judgment affirmed on the 21st day of October, 1895.

"Thereafter, on November 18, 1895, the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, addressed a communication to the register and receiver at Des Moines, Iowa, reciting the fact of said suit, judgment, and affirmance by the Supreme Court and directed that, in order to carry the restoration to entry of said lands into effect, they should publish a notice for a period of thirty days that the lands, a description of which was to be included in the notice, would be restored to the public domain and subject to entry on a day to be fixed by the notice, which should be ninety days from the date of the first publication, and that all persons claiming any part thereof under the act of March 3, 1887, should come forward within the ninety days immediately following the first publication and give notice of their claim by publishing their notice of intention to make proof thereon upon a day which should be subsequent to that fixed for the restoration. Said communication contained the following sentence: 'To the end that complications which might arise from the former practice of suspending application for these lands may be avoided, and the rightful claimant to acquire title with as little delay as possible, I have to direct that, in the notice of restoration, there be inserted a notice to all prior applicants that their applications confer no rights upon them and that upon the day set by you for the restoration the lands will be open to entry and disposal without regard to said applications,

which shall be held by the notice to be rejected; that all such applicants may also have opportunity to present new applications upon the expiration of the ninety days' notice, you will notice specially all parties shown by your records to have pending applications for these lands of the rejection thereof, of the date of the restoration and of the necessity of presenting new applications for the protection of their rights. In all cases of conflicting claims, you will proceed in accordance with the rules of practice in contested cases.' Pursuant to said communication the register and receiver of the United States land office fixed the 27th day of February, 1896, as the date prior to which applicants under the act of March, 1887, should file their applications, and as the date upon which persons claiming under the homestead laws of the United States should file their applications, which notice was duly published, &c. On October 22, 1895, the plaintiff Lyle settled upon the land in controversy and in February, 1896, tendered to the register and receiver of the United States land office at Des Moines, Iowa, a homestead application with the necessary fees therefor to enter said land, which application and fees were refused by the register and receiver, and on March 24, 1896, defendant appeared before the land office at Des Moines, Iowa, and tendered his homestead filing for the land in controversy, alleging a settlement, residence and cultivation of said land, and the legal qualification to make said entry, and tendered the legal and proper fees and homestead filing therefor, which filing and tender of fees the officers held in abeyance, pending the trial and examination of all parties concerned therein.

"Pursuant to the notice aforesaid, the defendant Patterson, on January 13, 1896, filed with the register and receiver of the United States land office at Des Moines, Iowa, his written notice of intention to make proof of defendant's purchase of the land in controversy under the provisions of the act of March 3, 1887. The register and receiver of the land office fixed the 13th day of May, 1896, upon which proof should be submitted on behalf of the plaintiff

and defendant herein and all others claiming any interest in said land, notice of which date of hearing was duly published in accordance with the requirements of the Department of the Interior. On May 13, 1896, plaintiff and defendant Patterson appeared, as well as other parties who had filed application to enter the same as a homestead. At said hearing the parties made proof of their respective claims, the register and receiver tendered their decision in writing that one Louis Hoffman was entitled to the land in controversy as a homestead. From the decision of the register and receiver, plaintiff and defendant Patterson each perfected appeals to the Commissioner of the General Land Office, and in August, 1899, the Commissioner of the General Land Office rendered a decision reversing that of the register and receiver, and decided that one James A. Beacom was entitled to the lands under the homestead laws of the United States. From that decision the plaintiff and defendant Patterson each perfected appeals to the Secretary of the Interior. The Secretary reversed the decision of the Commissioner of the General Land Office and decided that the defendant Patterson was a *bona fide* purchaser of said land under and by virtue of his contract of purchase with the railroad company before mentioned and that he was entitled to the land in question, under the act of March 3, 1887, as a good-faith purchaser. And thereafter a patent was duly issued from the United States, bearing date March 23, 1901, to the land in question to the defendant Patterson as a good-faith purchaser under said act of March, 1887.

"Subsequent to the decision of the Secretary of the Interior, to wit, January 30, 1901, Patterson conveyed said premises to T. H. Smith and W. H. Smith for a stated consideration of \$6360.00, and on March 31, 1901, and after the issue of the patent to Patterson, said T. H. Smith and W. H. Smith sold and conveyed the premises to defendant Thomas Beacom, in consideration of the sum of \$6600.00, and at the commencement of this suit the legal title was in the defendant Thomas Beacom.

"On May 24, 1901, plaintiff commenced this action in the Circuit Court of the United States for the

Northern District of Iowa, setting forth in substance, but more in detail, the facts hereinbefore referred to, and praying that it be adjudged and decreed that the decision of the Secretary of the Interior, holding that defendant Patterson was entitled to said lands as a good-faith purchaser under the act of March 3, 1887, be set aside, canceled and declared void, and that the defendant Beacom hold said land in trust for plaintiff, and for a conveyance from said Beacom to plaintiff. To this action the defendants appeared, issues were joined, proofs taken, and the circuit court entered a decree, dismissing complainant's bill."

From the decree of the circuit court, dismissing complainant's appeal, the complainant appealed to the Circuit Court of Appeals, and said appeal was determined and the decree of the circuit court affirmed at the December, 1909, term. The opinion of the Circuit Court of Appeals will be found in 176 Federal Reporter at page 909.

BRIEF.

A number of questions presented by the record were argued in the Circuit Court of Appeals, but that court deemed it unnecessary to consider but two of such questions. The two questions considered by the Circuit Court of Appeals will be first herein presented and argued, believing that it will be unnecessary for this court to go further for ample grounds for affirming the decree appealed from.

PROPOSITION I.

The defendant Beacom, having purchased the land in controversy in good faith and having taken conveyance by warranty deed after the issuance of the patent and without any notice of appellant's or intervener's claim of the land, is entitled to full protection under the law as a good-faith purchaser.

The foregoing proposition was unqualifiedly approved by the Circuit Court of Appeals in the last paragraph of the opinion of that court. In support of such approval Judge Munger cites *United States vs. Detroit Lumber Company*, 131 Fed., 668; *Colorado Coal Company vs. United States*, 123 U. S., 307.

Receiver's receipt for the land in controversy was issued to the defendant Patterson July 20, 1900, nearly a year before the commencement of this suit. Patterson sold to Smith and Smith January 30, 1901, the patent issued to Patterson March 23, 1901, and Smith and Smith sold to Beacom March 31, 1901, the last sale being about two months prior to commencement of this suit, and Beacom's deed was on record in the recorder's office of O'Brien county thirty days before the commencement of this suit. It will be borne in mind that the appellee Beacom is not the James A. Bea-

com who at one time attempted to homestead this land (Transcript, 92).

It is conceded by the agreed statement of facts that appellant and intervener knew of these conveyances, and that at no time after the final decision of the Secretary of the Interior up to the commencement of this action did the complainant or intervener make any claim to any of the defendants, or make known to any of the defendants that they still claimed the right to enter said land as a homestead; that they claimed or would claim any right, title, or interest in or to said land (Transcript, 91-2).

In view of this undisputed record, it occurs to us that we would not be justified in prolonging the discussion of this proposition.

"The presumption always is, in the absence of countervailing evidence, that men tell the truth, and that bills of sale and deeds *prima facie* valid are actually so, and purchasers may lawfully act upon this presumption."

"Jones *vs.* Simpson, 116 U. S., 609-615; 6 Sup. Ct., 538; 29 L. Ed., 742.

"U. S. *vs.* Detroit Timber & Lumber Co., 131 Fed., 668."

Quoting further from the opinion, on page 677:

"The purchase price had been paid, the legal title had been acquired. No notice of any fraud or perjury in the inception of or any defect in, the title which had been bought, and which had passed from the complainant to it when the patents were issued (Sandvels & H. Digest) had been received. Why was not its defense that it was a *bona fide* purchaser impregnable? No satisfactory answer to this question has occurred to us, and our conclusion is that one who purchases in good faith and pays value for the equitable title to land of the Government evidenced by the receiver's final receipt, and who, subsequently and before receiving any notice of any fraud or defect in his title, acquires the legal estate through the issue of the patent, is a *bona fide* purchaser, and his title is unassailable at the suit of the

United States to avoid the patent for fraud or perjury of the immediate or remote grantors of the purchaser. *Col. Coal Co. vs. U. S.*, 123 U. S., 307-309-322; *Sup. Ct.*, 131; 31 L. Ed., 182; *U. S. vs. Clark (C. C.)*, 125 Fed., 777-776; the Detroit case, affirmed in 200 U. S., 321."

Quoting from the opinion in *U. S. vs. Dalles Military Road Co.*, 41 Fed., from page 497, we have:

"So, in *U. S. vs. Minor*, 12 Sawy., 164; 29 Fed., 134, it was held, that a purchaser of land, in good faith for valuable consideration from a patentee of the United States, without notice of any fraud affecting the title, is entitled to rely upon the record, and that a patent, if valid upon its face, will not be vacated as to him, for matters *dehors the record* of which he has no knowledge."

"When land is within the jurisdiction of the Land Department, and for disposition, and the officers of the Department decide as to who is entitled to the land, and issue patent therefor, such patent conveys the legal title to the land, whether the decision is right or wrong, even though such error is one of law and goes to the extent of disposing of the public lands in a manner not authorized by law."

James vs. Gerinania Iron Co., 107 Fed., 596-618.

King vs. McAndrew, 111 Fed., 860.

U. S. vs. Winona & St. Peter R. R. Co., 67 Fed., 948.

U. S. vs. Detroit Co., 137 Fed., 668-674.

Smelting Co. vs. Kemp, 104 U. S., 636.

"A patent, although voidable, conveys the legal title, and such title, in the hands of a *bona fide* purchaser, cannot be disturbed at the suit of one having an equitable claim to the land merely."

U. S. vs. Stinson, 197 U. S., 200.

Col. Coal & Iron Co. vs. U. S., 123 U. S., 307.

U. S. vs. Burlington & M. & P. Co., 98 U. S., 334.

U. S. vs. Winona Co., 67 Fed., 948.

U. S. vs. Land Co., 49 Fed., 496, also see cases cited in *U. S. vs. Winona Co.*

PROPOSITION II.

The appellant, never having taken lawful possession of the land in controversy, but having done acts which constituted a mere trespass thereon at a time when defendant Patterson was in possession under claim of right, with full knowledge upon appellant's part of such possession and claim of right, he cannot now maintain this suit.

The foregoing proposition was also unqualifiedly approved by the Circuit Court of Appeals in its opinion. Judge Munger, in speaking for the court, said:

"It clearly appears by the agreed statement of facts that Pasco, in his purchase from the railroad company, paid the then full value of the land; that he entered into possession, and he and the subsequent assignees and grantees have continued since such purchase in the actual occupation and possession of the premises, cultivating the same, made lasting improvements, and have paid taxes thereon since the year 1887; that at the time complainant entered upon said land with a view of making a homestead settlement he knew of the occupation and possession by the defendant Patterson, of his improvements thereon, and of his claim of ownership of said land.

"If it be assumed for the sake of the argument that Patterson was not entitled to acquire this land under the congressional act of March 3, 1887, yet his possession was not *mala fides*. It was obtained and held under such a statement of facts that no one but the United States could question his right thereto. Under such circumstances, complainant's entry upon the lands was that of a mere trespasser, and as such he acquired no rights under the homestead laws.

"In *Atherton vs. Fowler*, 96 U. S., 513, the court said: 'Among the things which the law required of a pre-emptor, and the principal things required of him to secure his right, were: 1. To make a settlement on the land in person. 2. To inhabit and improve the same. 3. To erect a dwelling house thereon.'

"These things were also principal requirements of the homestead law. *Harvey vs. Haller*, 160 Fed., 531. In *Atherton vs. Fowler*, the court also said: 'It is not to be presumed that Congress intended in the remote regions where these settlements are made to invite forcible invasion of the premises of another in order to confer the gratuitous right of preference of purchase on the invaders. In the parts of the country where these pre-emptions are usually made, the protection of the law to rights of person and property is generally but imperfect under the best of circumstances. It cannot, therefore, be believed, without the strongest evidence, that Congress has extended a standing invitation to the strong, the daring, and the unscrupulous, to dispossess the weak and the timid from actual improvements on the public land, in order that the intentional trespasser may secure by these means the preferred right to buy the land of the Government when it comes into market. * * *

Does the policy of the pre-emption law authorize a stranger to thrust these men out of their houses, seize their improvements, and settle exactly where they were settled, and by these acts acquire the initiatory right of pre-emption? The generosity by which Congress gave the settler the right of pre-emption was not intended to give him the benefit of another man's labor, and authorize him to turn that man and his family out of their home. It did not propose to give its bounty to settlements obtained by violence at the expense of others. The right to make a settlement was to be exercised on unsettled land; to make improvements on unimproved land; to erect a dwelling house did not mean to seize some other man's dwelling. It had reference to vacant land, to unimproved land; and it would have shocked the moral sense of the men who passed these laws, if they had supposed that they had extended an invitation to the pioneer population to acquire inchoate rights to the public lands by trespass, by violence, by robbery, by acts leading to homicides, and other crimes of less moral turpitude.'

"That a party cannot initiate a right of homestead by settling upon land at the time in the actual pos-

session of another, under a *bona fide* claim of right, is shown in the following cases: *Hosmer vs. Wallace*, 97 U. S., 575; *Quinby vs. Conlan*, 104 U. S., 420; *Trenouth vs. San Francisco*, 100 U. S., 251; *Clipper Mining Co. vs. Eli Mining Land Co.*, 194 U. S. 220-231.

"To maintain this action and obtain a decree from a court of equity, awarding to him the title to the land in question, complainant must establish that he initiated such a right to the land, by settlement thereon, and offer to enter, as gave to him in equity a right to the land prior and paramount to the legal title of the defendants. *Campbell vs. Weyerhaeuser*, 161 Fed., 332. In this we think he has signally failed."

The opinion in *Harvey vs. Holles*, reported in 160 Fed., 531, is interesting in connection with this case. We will enter upon no extended review of the opinion, but will quote therefrom sufficiently to apprise the court of one of the features that we desire to suggest in this branch of the argument.

"The Government price of the land was then paid to the United States by the railroad company for the benefit of the defendant, and a patent was duly issued to him therefor. If by reason of his prior settlement upon, and improvement of, this land (it being within the common indemnity limits of both roads) the defendant was entitled to enter it as a homestead, a question not necessary to now determine, the fact that a patent was issued to him upon other grounds would not invalidate his title, nor entitle a stranger to deprive him thereof. So long as the United States do not complain his title should be upheld."

Cooper vs. Roberts, 18 How., 173, 182; 15 L. Ed., 338.

Field vs. Seabury, 19 How., 323-330; 15 L. Ed., 650, 655.

Deweese vs. Reinhard, 61 Fed., 777-780; 10 C. C. A., 55.

"Complainant and intervener never settled upon the land, their right to enter it as a homestead has never been recognized by the Land Department, and their unlawful attempt to intrude upon the defendants' prior peaceable possession in March, 1896, after the title of the railroad company was extinguished in October, 1895, gave them no right thereto.

"Knowing that the defendants were in possession of the land and making improvements thereon, claiming to own the same, they acquiesced in the decision of the Land Department for about two years, and then come into a court of equity asking that the land be awarded to them with the improvements placed thereon by the defendants. They are not entitled to such relief."

The United States *vs.* California Land Co., 148 U. S., 31-43-5; 13 Sup. Ct. 458; 37 L. Ed., 354.

United States *vs.* Detroit Timber Co., 131 Fed., 668-676; 57 C. C. A., which affirmed 200 U. S., 321; 26 Sup. Ct., 282; 50 L. Ed., 499.

Gertens *vs.* O'Connor, 191 U. S., 237-246; 24 Sup. Ct., 94; 48 L. Ed., 163.

Deweese *vs.* Reinhard, 61 Fed., 777; 10 C. C. A., 55.

Hartman *vs.* Warren, 76 Fed., 157-163; 22 C. C. A., 30.

Germania Iron Co. *vs.* James, 89 Fed., 811; 32 C. C. A., 348.

Linkswiller *vs.* Schneider (C. C.), 95 Fed., 203.

"Other questions are presented and fully argued by counsel, but they need not be considered, for the conclusion is that complainant has shown no equities that entitle him to the land and the bill should be dismissed at his costs. It is accordingly so ordered."

The foregoing opinion, and the opinions in the cases of *Linebeck vs. Vos*, *Lyle vs. Patterson et al.*, being the opinion in the instant case; *Dockendorf vs. Bassett et al.*, well illus-

trate the rule laid down by the courts, that a person may not trespass upon the prior possession of another, and thereby initiate any title to the land that he can thereafter assert as against the person in possession of the same, at the time of the attempted entry.

After perusing these decisions, we then come to the opinion in the case of *McKenna vs. Atherton*, on page 547 of said report. We find that the opinion, also written by Judge Reed, is in line with the *Knepper-Sands* case, 94 U. S., 476; 24 Sup. Ct., 744; 48 L. Ed., 1083, and which holds, that a purchaser at a time when the particular tract of land was in the possession of another, and that other having gone into the possession thereof, with the intention of homesteading the same.

There is no conflict between these two lines of decisions. Before passing to another proposition, in a separate division, but allied to the suggestions contained herein, we desire to call the attention of the court to the fact that the *Knepper-Sands* case was submitted upon a demurrer to the bill, and that the Supreme Court of the United States was bound by all the allegations in the bill of the complainant, which were well pleaded—among which was the allegation that the *Sioux City Co.* had not earned the land in controversy. We will undertake to show in a later division of this argument, that when the *Sioux City Co.* had constructed ten miles of road, and when such construction had been certified by the Governor of Iowa, and approved by the Secretary of the Interior, and patent issued by the United States to the State of Iowa, for the use and benefit of the *Sioux City Co.*, and its assigns forever, that it had in fact earned all the odd numbered sections of land within the place limits of the grant, except such as had been otherwise previously appropriated, and so on, with every ten-mile section from the Minnesota line to the city of Le Mars, or rather, for the full five 10-mile sections, which ended short of Le Mars six and one-half miles.

U. S. *vs.* E. & O. L. Co., 148 U. S., 31.

And we shall also attempt to show that the land within the place limits was first earned, by the Sioux City Co., to the exclusion of the land within the indemnity limits. And that, notwithstanding the fact that the State of Iowa patented to the Sioux City Co. more land within the indemnity limits, than the company was entitled to, yet that fact did not divest the company of the title to the land that it had earned within the place limits. And while the Supreme Court of the United States had the right to say, as a matter of equity, that it was not necessary to determine whether the Sioux City Co. had earned certain lands or not, within the place limits, as it had received all that it was entitled to, so far as the number of acres was concerned, on account of the road actually constructed, yet a different proposition arises when the question is raised, between a good-faith purchaser from the railroad company, a stranger to the title to the particular piece of land in controversy.

We also desire to call the attention of the court to the fact now, that the appellees are good-faith purchasers, not only as a matter of law, but they are good-faith purchasers by virtue of the agreement of the parties to this suit. It is stipulated in the agreed statement of facts, upon which this case was submitted, that the appellees, and their assignors, were purchasers in the utmost good faith.

We have two cases, reported in volume 161, Federal Reporter, which clearly define this legal watershed. The first is that of *Hoyt vs. Weyerhaeuser et al.*, page 324, and the second is the case of *Campbell vs. Weyerhaeuser et al.*, page 332. In the first case the purchasing agent is awarded the land. Both of these opinions are by Judge Sanborn, and on page 329 it is said:

"Jones completed his purchase and obtained his receipt on December 10, 1898. His entry was not canceled until some time subsequent to August 30, 1905, pursuant to the decision of the Secretary of the Interior made on that day, and the patent was finally issued on October 18, 1905. The defendants pur-

chased of the railroad company on January 19, 1900, many years before Jones' entry was canceled. They were therefore *bona fide* purchasers without notice, but they were purchasers from the United States through the railroad company with full notice of the equitable right of Jones, and they stand in the shoes of their grantors, the United States. As the United States never after December 10, 1898, had anything but the legal title to this land which they held in trust for Jones and his assigns, these defendants have nothing more."

In the second case it is said:

"One who has never by acceptance of a grant, or by settlement and improvement, or by occupation, or by entry, or by payment placed himself in privity with the United States in title before a patent issues to another may not maintain a bill in equity to charge the title under a patent with a trust in his favor. *Smelting Co. vs. Kempt*, 104 U. S., 636, 647; 26 L. Ed., 875; *Deweese vs. Reinhard*, 10 C. C. A., 55, 59, 60; 51 Fed., 777, 781, 782; *Hartmann vs. Warren*, 22 C. C. A., 30-36; 76 Fed., 157, 163; *New Dunderberg Mining Co. vs. Old*, 79 Fed., 598, 606; 25 C. C. A., 116, 124; *Spencer vs. Lapsley*, 20 How., 264, 269; 15 L. Ed., 902; *Beard vs. Federy*, 3 Wall., 478, 493; 18 L. Ed., 88; *McIntyre vs. Roeschlaub* (C. C.), 37 Fed., 556, 557.

"An indispensable basis of a suit in equity to charge the legal title to the land under a patent is an equitable interest in the land in the complainant which is superior to the legal title in the defendant. The right under the general land laws of every qualified citizen to enter any tract of land open to entry thereunder is not, and no one can convert it into, such an interest in land by making application to purchase which the officers of the Land Department unlawfully deny. The right to an allowance of such an application is a privilege merely, and not an equitable interest or title. The applicant acquires no equitable interest in the land by his application and its denial, and in the absence of such an interest no

suit in equity can be maintained. Irreparable injury is conclusively presumed from the refusal of one to perform his contract and to convey real property, and it is upon that ground that suits in equity to charge titles under patents with trusts for vendees and grantees are maintained; but there is no presumption or irreparable injury from the unlawful refusal of the Government to sell land in which the applicant has secured no equitable interest and hence such a refusal will not sustain a bill in equity. The applicant pays nothing for the land he is refused permission to buy, his loss by the refusal is measurable in damages, he may purchase another tract, and if the courts of equity should entertain suits upon such applications and denials they would become courts for the production, rather than for the prevention of a multiplicity of suits."

In *Smelting Co. vs. Kemp*, 104 U. S., 636, 647; 26 L. Ed., 875, the Supreme Court said that one who would maintain a suit in equity to charge the title under a patent with a trust in his favor must "connect himself with the original source of title so as to be able to aver that his rights are injuriously affected by the existence of the patent, and he must possess such equities as will control the legal title in the patentee's hands. The complainant in this suit made no such connection, and he had no equities of that character."

Counsel have proceeded with their argument as though the appellant had made a lawful settlement upon the land in controversy. There is nothing in this case on which to base the claim. The agreed statement of facts upon which this case was submitted has been liberally quoted in our "Statement of the Case," and which shows that appellees and their assignors have been in the actual, open, notorious, and undisturbed possession of the land in controversy for more than 21 years, and that they had such possession of the land in controversy for more than eight years prior to the time that the appellant sought to take possession of the appellees.

The fact of appellant's unlawful entry upon the land in

controversy was judicially determined in March, 1896 (Transcript, 249), and this decision must stand as the law of the case until reversed.

The claim of settlement upon the part of the appellant was in October, 1895. It will be seen (Transcript, 155) by the directions from the Department of the Interior, under date of November 18, 1895, that the land was not subject to entry until 90 days from the date of the first publication of the notice that the register and receiver of the land office at Des Moines was required to make.

It is shown by the agreed statement of facts (Transcript, 91) that the appellant never, in fact, paid any entry fee to the Government; that his application to enter the land was not received by the Government, but that the same has at all times been rejected.

The proposition that public lands, in the actual possession of another, is not subject to homestead, and that no rights can be initiated therein, under the homestead or pre-emption laws, even though the possession is rightful, is so well established as to barely make it incumbent to cite authorities in support thereof. Upon this question we submit the additional authorities:

Atherton vs. Fowler, 96 U. S., 513.

Quimby vs. Conlan, 104 U. S., 423.

Hosmer vs. Wallace, 97 U. S., 515-9.

Trenouth vs. San Francisco, 100 U. S., 251-7.

Tustin vs. Adams, 87 Fed., 377 (C. C. Wash.).

Rourke vs. McNally, 33 Pac., 626 (Cal.).

U. S. vs. Williams, 30 Fed., 309-14.

Cowell vs. Lammars, 21 Fed., 200 (C. C. Cal.).

Carmichael vs. Campodonico, 95 Pac., 164 (C. C. Cal.).

Short vs. Read, 96 Pac., 1060 (Nev.).

It will be remembered that upon the first four of the above cited cases the Circuit Court of Appeals rested its decision.

In the Tustin-Adams case it was said:

"Let it be conceded that at the time Mrs. Tustin tendered her homestead application for filing in the land office, the Adamases had no standing as homestead claimants, and that the defendants' title was initiated subsequent to December 13, 1889. Still they were in possession of the land, had inclosed it, and were the owners of the improvements which they had made and paid for. Their occupation, inclosure, and cultivation of the land was not, in view of the facts recited in the Secretary's decision, *mala fide*. No individual was wronged thereby and only the Government of the United States could legally institute proceedings to dispossess them. Under the circumstances mentioned, Mrs. Tustin could not legally initiate any right to the land under the homestead law."

PROPOSITION III.

The appellant's laches are such as ought in equity to preclude him from now questioning appellees' title.

The record of this case shows beyond any question of controversy that the applicant and intervener stood by, with full knowledge of all the matters and things related in the agreed statement of facts, allowing appellees to continue in possession of the land in controversy, to farm the same, to annually pay taxes thereon, and to in all respects, own, manage, and hold the same, and never once raised their voices in the slightest degree, until the commencement of this action, by service of a subpoena, in May, 1901-2.

Under this proposition we submit the question of the intention of the appellant, from and after the decision by the Secretary of the Interior, to abandon his claim to the land in controversy.

If the appellant had abandoned his claim at that time, and intended to abandon the same, and remain silent and

acquiesce in appellees' claim of ownership under their patent, for more than a year, then we say his laches are such as to constitute an estoppel, without more.

How are we to arrive at the intention of the appellant? We are driven to do so by an analysis of his conduct in connection with the subject-matter of this litigation.

It will be noticed, from the opinion of the Commissioner of the General Land Office (Transcript, 249) that Lyle, the appellant herein, had no right to the land in controversy as against the homestead applicant, Beacom, who was in possession of the land, so far as Lyle was concerned, at the time Lyle attempted a settlement thereon.

It is also shown (Transcript, 248), that the register and receiver held that Beacom's settlement would give him the preference right of entry but for the fact that he had exhausted his homestead rights by his prior entry made in Devil's Lake District, North Dakota. This question of Beacom having exhausted his homestead rights was cleared up before the Commissioner of the General Land Office, and Beacom awarded the right to enter the land (Transcript, 251).

Yet, Beacom's right as against appellee Patterson, only prevailed temporarily, because of the erroneous holding, which was made in some of the earlier hearings before the Department, that the "modified contract" precluded the purchasers from the railroad company from making the claim that they were good-faith purchasers.

It might be noticed here, that counsel for appellant, in their argument, only incidentally refer to the fact of the "modified contract," and evidently base no right herein upon that fact. They could not be heard to urge that question for two reasons:

(1) The issue is not tendered by appellant in his bill of complaint, and

(2) The agreed statement of facts, upon which this case was submitted, provides, that Pasco, Patterson's assignor, was a good-faith purchaser, and that Patterson, as well as the other appellees were good-faith purchasers, and acted with the utmost good faith, in all respects, in their several purchases.

The register and receiver, in awarding the land to Hoffman, and the Commissioner of the General Land Office, in awarding the land to Lyle, erred, as a matter of law, as will be seen by the decision of the Secretary of the Interior, and the Secretary reversed these decisions on the authority of the opinion by Judge Shiras, in the case of *Linkswiller vs. Schneider*, 95 Fed., 203-207.

We find that upon the authority of the opinions of the register and receiver and the Commissioner of the General Land Office, excluding the question of the modified contract, and upon the opinion of the Secretary of the Interior, that Beacom had a superior right, as against the appellant, Lyle, to claim this land, and to maintain this suit.

We are then confronted with this question, which is incidental to the proposition under discussion, to wit: Can the appellant herein maintain this suit, when the record discloses the fact that, as a matter of law, the homestead applicant Beacom possessed the superior right to enter the land in controversy over the appellant? We feel that this question must be answered in the negative; if not, then some of the other homestead applicants might have prosecuted this suit upon the failure of either Beacom or Lyle to institute the same.

The uncontradicted testimony, and the findings of all the officers of the Land Department, shows that appellant's entry upon the land was by trespass upon the possession of another, and that such entry gave him no rights or standing whatsoever, as a matter of law.

If we are not correct in this matter, then we are confronted

with this queer proposition: That a person, eligible, according to the record before the Secretary of the Interior, to prosecute a claim, drops out, and refuses or neglects to prosecute the same, that the next man down the line, or some other man occupying any position along the line of the several homestead applicants, may step in and successfully urge that, because some one else has not seen fit to prosecute a right that he possessed, that he thereby becomes the beneficiary of the rights and claims of that other person.

The natural abandonment of a homestead right does not stand in analogy to the statute of limitations, but depends upon the fact. If a homestead claim is in fact abandoned, the person abandoning the same can never thereafter pick it up where he left off; if another claim is made by the same person, it becomes a new claim and as though that person had never had any connection with the particular piece of land.

As to the doctrine of laches, as applied by the courts of equity, see

Patterson vs. Hewitt, 195 U. S., 309.

Ins. Co. vs. Anderson, 190 U. S., 685.

Steinbeck vs. Bon Homme Mining Co., 152 Fed., 333.

M. P. C. vs. Anacker, 49 Fed., 259 (8th Cir.).

U. S. vs. McGraw, 12 Fed., 249 (8th Cir.).

PROPOSITION IV.

As against appellee Beacom, the United States is estopped both by deed and by its allegations and the allegations of its bill in suit against the Sioux City Company, wherein the title was quieted to the land in controversy.

The doctrine of "estoppel by deed" applies to and binds the Government and persons in privity with it or claiming under it.

Branon vs. Worth, 84 U. S., 32.

The various acts of Congress relating to the grant, the due certification by the Government and the completion of the full ten-mile sections, and the certification by the governor, and all those things that were necessary to be shown the Government, were recited in the patent. See patent (Transcript, 146-147).

The recitals in this patent are the announcement by the Government that the railroad company had earned the land in controversy, together with other lands therein described.

U. S. vs. Dallis, 41 Fed., 467.

By the recitals in the patent the title to the land vested in the State, for the use and benefit of the Sioux City Co. and its assigns forever, requiring such an action as the Government subsequently instituted against the railroad company to divest it of its right and title to the land. The idea that the trustee, the State of Iowa, had the power, legislative enactment, without describing any particular piece of land, to divest the railroad company of its equitable title to the land and restore it to the United States Government occurs to us to be preposterous.

We are attempting to present in this argument such propositions as we deem pertinent, many of which were not presented in the Knepper-Sands case, nor in any other case that

has reached the Federal courts, growing out of the O'Brien County land litigation. We make this statement in view of some of our assertions, one of which is:

That no division of the Federal courts has at any time held, in all the preceding litigation in connection with the land grant in question, upon issues properly presented, that the Sioux City Co. did not, in fact, fully earn the land within the 10-mile limits of the 5 10-mile sections of road constructed from the southern line of Minnesota, in a southerly direction, for a distance of 50 miles.

The Government, in its case against the Sioux City Co., having bottomed its case upon the act of March 3, 1887, would not now be permitted to question a patent issued under that act.

And appellant is likewise estopped, he claiming in privity with the United States, and said suit being a part of the claim of chain of title.

State vs. Taylor, 28 La Ann., 460.

Folger vs. Palmer, 35 La. Ann., 743.

Winn vs. Strickland, 16 So., 606-12 (Fla.).

The suit by the United States *vs.* The Sioux City Co. was bottomed upon the act of March 3, 1887. This was not only a theory in the case, but is one of the principal allegations in the bill of complaint for the authority to maintain the suit.

This thought is presented under this proposition apart from the proposition of a general equitable estoppel.

PROPOSITION V.

The United States would be precluded under the doctrine of "equitable estoppel" from challenging the validity of its patent, and the appellant, claiming in privity with the United States, is likewise precluded.

The doctrine of equitable estoppel applies to the United States the same as to a private person. See *James vs. Germania Iron Co.*, 107 Fed., 597-618.

This doctrine was announced in *U. S. vs. Stinson*, 125 Fed., 607. It was affirmed in *U. S. vs. Stinson*, 197 U. S., 200. A like holding is found in *U. S. vs. McLaughlin*, 30 Fed., 147-161, and the holding of the Circuit Court of Appeals was affirmed in *U. S. vs. McLaughlin*, 127 U. S., 428; see also *Clark vs. U. S.*, 95 U. S., 539.

State vs. Jackson R. R. Co., 69 Fed., 116.

State vs. Milk, 11 Fed., 389.

State vs. Flint Co., 51 N. W., 103.

Cahn vs. Barnes, 5 Fed., 326.

Gibbons vs. U. S., 5 Ct. of Claims, 416.

"A person bound by equitable estoppel, persons in privity are likewise bound."

See

2 Pom. Eq. (3d ed.), sec. 813.

Peters vs. Jones, 35 Ia., 512.

Cahn vs. Barnes, 5 Fed., 326.

Knevals vs. R. R. Co., 62 Fed., 224.

Bausman vs. Eads, 48 N. W., 769.

Deering Co. vs. Patterson, 77 N. W., 568.

In re McKeag, 99 Am. St., 80.

Portis vs. Hill, 98 Am. Dec., 481.

McCravy vs. Remsen, 54 Am. Dec., 194.

"A person buying in the honest belief that he will obtain title is a good-faith purchaser within the meaning of the act of March 3, 1887, and the general rules governing constructive notice do not apply."

See

U. S. *vs.* So. Pac. Co., 76 Fed., 134-8.

U. S. *vs.* So. Pac. Co., 98 Fed., 45.

U. S. *vs.* Winona Co., 165 U. S., 463.

The very foundation of appellant's claim is based upon the thought that he stands in privity with the United States. We deny this contention, but, conceding the fact for the purpose of this branch of the argument, we then say that the Government is equitably estopped herein; also the appellant, claiming in privity with the United States, is likewise estopped.

This estoppel extends to the right of the United States, in all the circumstances, to deny the question of the adjustment of the grant according to the terms of the act of Congress of March 3, 1887. The matters and things operating as an equitable estoppel against the Government are not only found in the history surrounding this land, and land grant, from 1864 to 1887, but they are found in the history, connected with this land, from 1887 until 1900—the date of the final decision by the Secretary of the Interior—likewise until the year 1901, when this suit was instituted.

In reviewing the question, every step taken by the Government, and every step taken by the national courts, and every interpretation by the Land Department, with reference to the grant, and with reference to the act of March 3, 1887, should be kept in mind. Also the appellees' connection with the land in controversy; that of their assignors; the conceded good faith of all the parties; the matter of the payment of more than a thousand dollars to the railroad company, and in bringing the land to the high state of cultivation as a farm, and especially the matter of the payment

of the final payment to the Government in direct consideration of the execution of the patent, and the fact that the Government still retains that consideration.

The court should take into consideration, and it seems to us to have much bearing, the decisions of the judicial branches of this Government with reference to the land in controversy, wherein the Federal courts, including the Supreme Court of the United States, assumed jurisdiction and passed upon the questions between the Milwaukee Railroad Co. and the Sioux City Co. In that litigation the Federal courts announced time and time again, that the Sioux City Co. had performed all the acts, and done all the things, required of it by the United States, under the act of 1864, and that it had, in fact, earned all the land within the 10-mile limits.

We call attention especially to Exhibit 17 (Transcript, 107), this exhibit showing the decree of the Circuit Court of the United States, Southern District of Iowa, the Honorable James M. Love, presiding, and which said decree was entered upon the mandate and decision of the Supreme Court of the United States. This decree was entered May 21, 1886. This decree recites, in several instances, the fact that the Sioux City Co. had earned this land. Following this decree, Exhibit 18 (Transcript, 122), is the report of the commissioners appointed by the Federal court to partition these lands as between the two companies. This report was filed by the commissioners on October 25, 1886, and the whole thereof, decree and the commissioners' report, was recorded in the office of the recorder of deeds of O'Brien County, Iowa, on the 3d day of December, 1886 (Transcript, 129).

In this connection it will be remembered that the patent, which is as broad as a patent could be worded, from the United States to the State of Iowa for the use and benefit of the Sioux City Co. and its assigns forever, had been of record in O'Brien County for years. It is shown by the agreed statement of facts, that, almost immediately follow-

ing the date of the record in O'Brien County of the decree, and of the report of the commissioners, early in 1887, the Sioux City Co. placed agents in the field to sell this land; the most of the same was sold during the years 1887 and 1888, and the land in controversy was sold long prior to the commencement of the suit by the United States against the Sioux City Co. to recover the land (Transcript, 84).

It is true, that in the suit by the Milwaukee Co. *vs.* the Sioux City Co. the United States was not a party. But is the ordinary layman expected to disbelieve the solemn pronouncements of the highest judicial authority in the country? Or, are they supposed to understand and know how they will be affected, some time in the distant future, and the title to the land which they may purchase, because the Government was not a party to a proceeding wherein the Supreme Court of the United States, and the inferior courts of the Government, had said that the Sioux City Company had earned the land?

We are in a court of equity now, and we are dealing with equities as between the parties to this suit, and the real equities, as between the United States and these appellees, were the United States the plaintiff, are relevant and of pertinent inquiry, and consideration.

It is sought to be shown, by the appellant, that the acts of the Legislature of the State of Iowa, of 1882 and 1884, foreclosed all title that the Sioux City Co. might have had to these lands. In this connection it should be remembered that the Government did not recognize these acts of the Legislature of the State of Iowa, as performing any such office. But, on the contrary, it proceeded to adjust the lands in controversy agreeable to the act of Congress of March 3, 1887. The Government notified the appellees herein to make proof as good-faith purchasers under the act of 1887, and the Government accepted the money of the appellees and still retains it. And, at no time, has the Government sought to repudiate its bargain.

Were the United States the complainant herein, and were it not otherwise precluded, it would first be required, by the courts of this country, to tender a return of the purchase price, paid by appellees, for this land.

U. S. *vs.* Budd, 43 Fed., 603.

U. S. *vs.* Budd, 144 U. S., 154.

U. S. *vs.* White, 17 Fed., 561.

The proposition was determined in 43 Federal, and the case was affirmed in the 144 United States, without criticism of the holding of the Circuit Court of Appeals.

PROPOSITION VI.

As a matter of equity appellees have the right to claim the benefit and the protection of section 5 of the act of 1837, and also the protection and the benefit of the act of March 2, 1896, 29 Statutes at Large, 42, chapter 39. Also the act approved February 12, 1896, 29 Statutes at Large, 6, chapter 18.

The fact that the patent recites that it was issued under section 4, of the act of 1837, ought not to militate in the least degree against the rights of the appellees, as contemplated in section 5, of the act. The appellees possessed every qualification required by section 5 of the act of 1837. Also appellees' rights fall within the remedial purposes of the act of Congress of March 2, 1896.

Section 5, of the act of 1837, makes provision for "lands not conveyed to or for the use of such company." Also, "where lands so sold are for any reason excepted from the operation of the grant to said company."

This section could not have been invoked by Knepper, in the Knepper-Sands case, because Knepper fell within that part of section 5 which provided for the protection of *bona fide* occupants of the land under the pre-emption or homestead laws of the United States at the time of such sales (24 Stat., 557).

Section 1, of the act of March 2, 1896 (29 Stat., 42), provides, "that suits to vacate and annul patents hereafter issued shall only be brought within 6 years after the date of the issuance of such patents. * * * But no patent to any land held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed."

The act of March 2, 1896, further provides, in section 2, that:

"A person claiming to be a *bona fide* purchaser who shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, the Secretary shall request that suit be brought in such case against the patentee, corporation, company, etc.; that if the decision by the Secretary of the Interior shall be adverse, on the *bona fides* of such claimant, the same shall not be conclusive, and if a *bona fide* purchaser who has submitted his claim to the Secretary of the Interior, is made a party to the suit, the court shall decree the confirmation of the title."

In the case of *U. S. vs. So. Pac. R. R. Co. et al.*, 76 Fed., 134, on page 138 of the opinion it is said:

"By a still later act, to wit, 'An act approved March 2, 1896, and entitled, "An Act to provide for the extension of the time in which suits may be brought to vacate and annul patents, and for other purposes," and relating to the same matter in part, as is embraced by the adjustment act of March 3, 1887, Congress still further protected purchasers from such grantee companies."

A court of equity 'will not set aside a patent, merely because of an error of the Land Department in designating a wrong section in an act of Congress under which the patent was issued.

Durrell vs. Windom, 23 L. Dec., 508.

Power vs. Olson, 25 L. Dec., 77.

In the case of *Benner vs. Lane*, 116 Fed., 407, Judge Shiras said:

"Since the rendition of the opinion in the *Manley vs. Tow* case, the case of *U. S. vs. So. Pac. R. R. Co.*, 22 Sup. Ct., 285; 46 L. Ed., 425, has given a construction to the acts of February 12, 1887, and March 2, 1896 (the date, 'February 12th,' is evidently a misprint and should read, 'March 3d'), and holds that section 4, of the act of 1887 is not to be restricted to purchases made before the adoption of that act, but will include transactions had before the final adjustment of the particular grant under the general provisions of the act. In the opinion filed in the case cited it is expressly stated that the question decided was wholly between the Government and the purchaser from the railroad company, as no third party was claiming title thereto, and the court cites its prior decision in the case of *Winona & St. Paul R. R. Co. vs. U. S.*, 65 Fed., 483; 17 Sup. Ct., 381; 41 L. Ed., 798, as a correct construction of the statute."

On page 416 of the opinion the following occurs:

"The remedial purpose of the acts of 1887 and 1896 in the recognition of the equities of the purchasers is to be given fair and full effect against the Government, but the waiver of the rights of the Government was not intended to be a denial of the rights or equities of third parties, nor to create a preference in favor of purchasers over the rights of third parties that had come into existence and had become attached to the land years before the date of the purchase."

The case of the *U. S. vs. So. Pac. R. R. Co. et al.*, 38 Fed., 832, is an important decision, for consideration generally in this case. But we desire now to expressly call attention to the language of the opinion most applicable to the proposition under discussion.

"The act of March 2, 1896, put an end to all questions in relation to all patents for lands held by *bona fide* purchaser from the railroad company regardless

of the citizenship of such purchaser; for it is expressly therein declared that no such patent shall be vacated or annulled and expressly confirms the right and title of such purchaser."

U. S. vs. Winona & St. Peter R. R. Co., 185
U. S., 463-467-477; 17 Sup. Ct., 368.

This act, although passed after the entry of the original decree in this cause in this court, is to be construed and applied.

In the case last cited the Supreme Court said:

"It is true this act (the act of March 2, 1896) was passed after the commencement of this suit—indeed, after the decision by this court, but is none the less an act to be considered. There can be no question of the power of Congress, to terminate, by appropriate legislation, any suit brought to assert simply the rights of the Government.

"This suit was instituted by the Attorney General in obedience to the direct command of Congress as expressed in the act of 1887, and Congress could at any time prior to the final decree of this court direct the withdrawal of such suit, and it accomplishes practically the same result when by legislation within the unquestioned scope of its power, it confirms to the defendants the title to the particular property which it was the purpose of the suit to recover. So, if this act of 1896, taken by itself alone, or in conjunction with preceding legislation, operates to confer the title apparently conveyed by the certification to the State for the benefit of the railroad company. That necessarily terminates this suit adversely to the Government."

Some of the tracts embraced in the suit in question had not been patented to the railroad company, and the court says:

"We are of the opinion that Congress intended by the sentence we have quoted from the act of 1896, to confirm the title which in this case passed by certification to the State."

It will be noticed by the quotation from the Supreme Court of the United States, in the above opinion, that lands certified were treated the same as lands patented, as it is therein recited: "many tracts had been erroneously certified or patented." And it is said: "must have been well known to Congress, and naturally, therefore, a subject of its legislation."

It will be borne in mind that we are not combating the rights of a man who had settled upon the land in controversy, years prior to the time of the purchase from the railroad company, and who had improved the land, made his home thereon, and was residing thereon with his family at the time of the purchase, as was the situation in the Knepper-Sands case, and in the Benner-Lane case.

We are urging the rights of men who were in the full undisputed possession of the land in controversy at the time, and for many years prior to the time that appellant sought to make his entry.

There is such a thing as an attempt to homestead land for "speculative purposes," just as certainly as there are cases of purchases for "speculative purposes" merely. Because a man announces the fact that he is desirous of homesteading a certain piece of land, does not, *ipso facto*, clothe him with every equitable sentiment, nor does it necessarily excite in his favor the conscience of a court of equity, as in the full and complete picture of the poor man seeking to establish a home upon the wild, unoccupied, and unappropriated western Government domain. And the language of the courts, when employed with reference to such a case, has no application, either in sentiment or in equity, to the facts and questions in the instant case.

On page 803 of the opinion, it is further said:

"In other words, it was limiting the restoration of the title of the original entryman to cases in which he had a continuing and present equitable right to recognition. As to all other cases Congress reserved the determination of the equities between the Government, the railroad company, and the purchasers from

the latter, and in subsequent sections it made further provision for the adjustment of such equities."

Further:

"It will be observed that this protection is not granted to simply '*bona fide* purchasers' (using that term in a technical sense), but to those who have one of the elements declared to be essential to a *bona fide* purchaser, to wit, good faith. It matters not what constructive notice may be chargeable to such a purchaser, if, in actual ignorance of any defect in the railroad company's title, and in reliance upon the action of the Government in the apparent transfer of title by certification or patent, he has made an honest purchase of the lands."

It is further said:

"Section 5 of the same act applies to cases in which no certification or patent has issued, and yet the land sold by the railroad company are the numbered sections prescribed in its grant, and coterminous with the constructed portions of its road; and it is there provided that, where the lands so sold by the railroad company 'are for any reason excepted from the operation of the grant to said company,' the purchaser may obtain title thereto from the Government by paying to it the ordinary Government price of such lands."

Further, the opinion proceeds:

"Congress attempted to protect an honest transaction between a purchaser and the railroad company, even in the absence of a certification or patent."

There is nothing arising out of the facts in the instant case to prevent the application of the principle announced in the last sentence quoted; and there is nothing in the real questions determined in the Knepper-Sands case, or in the Benner-Lane case, to weaken the proposition stated in said last-quoted sentence. In this opinion, the Circuit Court of Appeals cites with approval the case of *Linkswiller vs. Schneider*

et al., and quotes largely from the opinion by the Secretary of the Interior. As quoted in the opinion, we find the following:

"If there be any doubt about the correctness of this view of the purpose and intent of the act of 1887, it is removed by a perusal of the amendment thereto of February 12, 1896 (29 Stat., 6), within which Congress expressly recognizes partly performed contracts of purchase, like that of Schneider, and constituting a purchase within the meaning of the law."

Judge Ross further says:

"I am also of the opinion that the legislation of Congress under consideration is not to be limited to purchasers who bought prior to the respective enactments. The legislation is remedial in its nature, and therefore to be liberally construed."

The opinion of Attorney General Garland, given in response to questions propounded respecting the act of 1887, and also the instructions of Secretary Noble to the Commissioner of the General Land Office as late as August 30, 1890, may be read with profit.

Taking up the case, in its continued litigation, as reported in 98 Fed., 45, we find the same liberal construction devoted to the act of March —, 1887, and to the act of February 12, 1896.

The litigation versus the Southern Pacific Railroad Company was lengthy, and in 184 U. S., 49, the case, as reported, contains an elaborate brief upon both sides of the proposition, and will be found convenient in the consideration of most of the questions involved herein. The case of *Schneider vs. Linksweller* will be found cited therein.

PROPOSITION VII.**The Sioux City Company Earned the Land.**

It will not be necessary to here recite the provisions of the act of 1864, as they are contained in the transcript, and also, in the main, in appellant's brief, commencing on page 6.

Congress by the act granted to the State of Iowa the land designated in the act for a specific purpose, namely, to aid in or to be devoted to the construction of a railroad designated by the act. The title conferred by the act and which is vested under the terms of the act is lodged in the State as trustee. The purpose of the trust is to secure the completion of the line of railway therein designated.

Congress empowered the trustee, the State of Iowa, to select the real beneficiary of the grant. When the State of Iowa selected such beneficiary, and the beneficiary undertook to construct the railroad according to the terms of the grant, the duties of the State are that of a mere trustee, excepting that if the beneficiary did not comply with the terms of the grant within the specified time "the lands granted by the act, and not patented, shall, by the term of the act, revert to the State for the purpose of securing the completion of the road."

At this point it is pertinent to inquire what lands reverted under the terms of the grant if the road is not completed within ten years from the date of the acceptance.

The language of the act is:

"That if the roads are not completed within ten years from their several acceptance of this grant, the lands hereby granted, and not patented, revert to the State of Iowa for the purpose of securing the completion of the said roads within such time, not to exceed five years and upon such terms as the State shall determine."

Under the express provisions of the act, therefore, it is not the land which had been granted which shall revert at the expiration of ten years, but it is the lands which have been granted and not patented.

Where a grantor or donor has conveyed land in trust on certain conditions, and required the trustee to act on the happening of such conditions, it is undoubtedly true that the trustee cannot act except in the manner and upon the happenings of the conditions named. By the express provision of the act, it is only such lands as have not been patented which will revert to the State. Lands which have been patented do not revert to the State under any fair and reasonable interpretation of the act. It is also pertinent to inquire to what the words "and not patented" in the quotation used in the act refer. Reading the entire act from beginning to end, it will be found that there is only one provision or reference therein to the *patenting* of the land, and that is the provision which requires the Secretary of the Interior to patent the lands to the State for the use and benefit of the railroad company upon the certification of the Governor, reciting that a ten-mile section or sections have been completed in accordance with the terms of the grant. This being true, under the provision of the act, none of the lands which have been patented by the United States to the State of Iowa reverted to the State, but only such land as had not been patented reverted to the State on the failure of the railroad company to complete the road within ten years next following the date of the acceptance. This being true, what is the state of the title under the act as to the lands which were patented by the United States to the State of Iowa, and what power had the trustee over such land after the same was patented by the United States to the State for the use and benefit of the railroad company?

As we have seen, the State had no power to devote such land as had been patented to the completion of the road by conferring the same upon some other road to secure its com-

pletion. Said land did not revert to the State, therefore it must follow that it was the intent of Congress to make or constitute the State of Iowa, the mere trustee, holding the mere naked legal title to such land as should be patented under the provisions of the act.

The State of Iowa, therefore, as to all lands patented was the mere trustee, holding the naked legal title; the equitable title and ownership was lodged in the railroad company the moment that such patents were issued by the United States to the State for the use and benefit of the railroad company "and their assigns forever."

Such was the construction of the statute by the United States officials, in whom is vested the power to carry out the terms and conditions of the grant. This is apparent from the language of the patent which was issued by the United States to the State of Iowa (see patent, Exhibit 24, Transcript, 176). This patent is a grant of the land in controversy and the lands in the patent referred to, vesting in the State of Iowa the legal title for the use and benefit of the Sioux City & St. Paul Railroad Company and its assigns forever. Under such conveyance the United States parted with its title and lodged the equitable title and ownership in the Sioux City Company, the State of Iowa being the mere trustee holding the naked legal title.

In the instrument so conveying the title, it is solemnly declared and asserted that all the conditions preceding the rightful vesting and ownership of the title in the Sioux City Company have been complied with upon the part of said company. All the preceding conditions vesting in the railroad company the right to obtain title to the lands are recited as having happened, and that the railroad company had fully earned the land described in the patent. This patent vested the title in the State and the beneficiary ownership in the railroad company. The State as trustee had no power to recall the title from the railroad company, nor had it any power as such trustee to pass judgment upon the ques-

tion as to whether or not the railroad company had earned the land, nor had it power by legislative action or otherwise to resume, recall, or divest the railroad company of the title which the United States by its conveyance vested in such company. We think we may safely contend that when such patent was executed and accepted by the State, made a public record and document, and when the same was recorded in the proper records of O'Brien county (a fact not necessary, however, to support our contention), the equitable ownership vested in the railroad company, and any one would be warranted in relying upon such instrument as vesting ownership in the railroad company, and could safely deal with the railroad company as the owner of the real estate conveyed by such instrument.

We desire to notice what fact or state of facts occurred which would charge the purchaser with knowledge or notice that by their purchase from the railroad company they did not procure any right, title, or interest in and to the lands in question. It will be observed from the agreed statement of facts that the land in controversy is within the ten-mile limits of the Sioux City Company, as originally located and as actually constructed. The land is within the first two or three ten-mile sections that were certified by the Governor of the State of Iowa. Therefore, the physical facts were such, looking to the instrument of conveyance to the State of Iowa and looking to the terms of the grant of Congress, as to lead any one desiring to purchase title to the land to assume that the railroad company was the real owner of the land, and that the title was or would be completed by conveyance from the State of Iowa to such railroad company.

Such were the conditions which existed at the time of the purchase by the appellees in the instant case.

It appears, however, that the Legislature of the State of Iowa took some action with reference to the lands granted under the act of May 12, 1864. It is contended that the fact that the Governor of the State of Iowa, in his biennial

message to the legislature of 1882, called the attention of the legislature to the fact that the Sioux City Company had not completed its road, and to the further fact that the railroad company, in 1889, requested the Governor to certify to the company certain lands, which he refused to do; that such message constitutes notice that the land in controversy had not been earned and, therefore, the Sioux City Company was not entitled thereto. This message simply recites that the company had requested the Governor to certify to the remaining lands embraced within the grant. It did not designate any lands which he refused to certify, nor did it designate or specify that it was land which had been patented by the United States to the State that was involved in this message.

Even though it should be held by the court that the message of the Governor is such a public document as that all persons are presumed to know its contents, still, as it in no manner referred to or designated therein the tract of land in controversy, it cannot be decreed by the court to be sufficient notice or warning to the appellees, so as to put them upon inquiry or charge them with notice that the Sioux City Company had no title to the land, or did not procure title under the grant.

Following the message aforesaid, the Legislature of the State of Iowa approved an act March 16, 1882, which recites the terms of the grant of May 12, 1864, and the terms of the several acts of the General Assembly conferring the lands so granted by act of Congress upon the Sioux City Company, and then it provides as follows:

"SECTION 1. That all the lands, and all rights to lands, granted or intended to be granted to the Sioux City & St. Paul Railroad Company by said acts of Congress and of the General Assembly of the State of Iowa, which have not been earned by said railroad company, by a compliance with the conditions of said grant, be, and the same are, hereby absolutely and entirely resumed by the State of Iowa, and that the same

be and are absolutely vested in said State as if the same had never been granted to said railroad company."

This is the act which is relied upon as divesting the railroad company of the title to the land which had been granted under the act of Congress to the State of Iowa for the use and benefit of the railroad company.

It will be observed that the act in terms does not refer to or describe the land in controversy, or any particular tract of land. It does, however, attempt to resume the title to all land which had not been earned by said railroad company. There is nothing on the face of the act which intelligently or otherwise designates what lands had been earned nor what lands had not been earned. The lands which had been patented to the State of Iowa the State had no power to resume title to because the act of Congress granting the lands limited the resumption of such lands "as had not been patented."

As the State at the time of the enactment of the statute held simply the naked legal title for the use and benefit of the Sioux City Company under the terms of the patent, it had no more power to resume title than if the United States had conveyed the land to Tom Jones for the use and benefit of the Sioux City & St. Paul Railroad Company. The State of Iowa, as to the land which had been patented, was the mere trustee holding the naked legal title, and, as we understand it, a mere trustee with no further power than the power to hold and retain the legal title for the benefit of the beneficiary, has no power to pass judgment upon the question as to whether or not the beneficiary is entitled to such title.

The act of the State legislature, therefore, approved March 16, 1882, in our judgment, did not affect the title to the land in controversy, because such land had been patented to the State of Iowa, and because such land, being within the ten-mile limits of the railroad, was in fact earned at the time the act of the General Assembly in question was approved.

It is claimed also that the act of the Legislature of the

State of Iowa, approved April 2, 1884, operated to vest in the United States Government the title to the lands in controversy, and all other land which had not been conveyed by the State of Iowa to the Sioux City Company. Chapter 71 of the act of 1884 aforesaid, after reciting the several grants of Congress and the several acts of the Legislature of the State of Iowa, provides as follows:

"SECTION 1. That all lands and all rights to lands resumed and intended to be resumed by Chapter 107 (of the acts of the Nineteenth General Assembly of the State of Iowa) are hereby relinquished and conveyed to the United States.

"SECTION 2. The Governor of the State of Iowa is hereby authorized and directed to certify to the Secretary of the Interior all lands which have heretofore been patented to the State to aid in the construction of said railroad and which have not been patented by the State to the Sioux City & St. Paul Railroad Company, and the list of land so certified by the Governor shall be presumed to be the lands relinquished and conveyed by section 1 of this act; provided, that nothing in this section shall be construed to apply to lands situated in the counties of Dickinson and O'Brien."

These two sections must be construed together because they are part of one and the same act of the Legislature and involve the same subject matter. Section 1 provides that all lands that were intended to be resumed by chapter 107 of the Nineteenth General Assembly are relinquished and conveyed to the United States. If this section stood alone it would be a relinquishment, or an attempted relinquishment, of all lands intended to be relinquished by the former General Assembly; but as we have seen, the former act simply relinquished such lands as had not been earned; and again, the Legislature, as we have attempted to show, had no power to relinquish lands which had been patented and conveyed by the United States to the State of Iowa for the use and benefit of the Sioux City Company, because the patenting and conveyance was a completion and fulfillment of the contract be-

tween the Sioux City Company and the United States, and the conveyance lodged in the State the naked legal title, the ownership and equitable title being thereby vested in the Sioux City Company.

Section 2, however, is a limitation upon the provisions of section 1 of the act of the Twentieth General Assembly, approved April 2, 1884. First, it directs the Governor of the State to certify to the Secretary of the Interior all lands which had theretofore been patented by the State to aid in the construction of the road, and which had not been patented by the State to the Sioux City Company. Second, the list of lands so certified by the Governor shall be presumed to be land relinquished and conveyed by section 1 of the act. Third, that nothing in said section 2 contained shall be construed to apply to lands situated in the counties of Dickinson and O'Brien.

Under the act, therefore, the Governor was to certify to the Secretary of the Interior all lands which had been patented to the State; but not patented to the railroad company; but only such lands as were certified by the Governor should be deemed to be relinquished under the terms of section 1, and, further, the proviso in the act limits the land so relinquished, and to be listed and certified, to lands located in the counties other than Dickinson and O'Brien.

Hence, under the act of the Twentieth General Assembly, and the act of the Nineteenth General Assembly, there is nothing to charge the purchaser from the Sioux City Company with any notice or knowledge that the lands in O'Brien County which had been patented by the United States to the State of Iowa for the use and benefit of the Sioux City Company were sought to be relinquished to the United States, or that either the United States or the State of Iowa had any equities as to such lands which would defeat the title of the Sioux City Company, or which would deprive the purchaser of any right or interest in and to the land under and by virtue of his purchase from such railroad company.

We contend that up to the time of the purchasing by appellees nothing had been done, no claim had been made, and no action had been taken upon the part of the State of Iowa, the United States Government, or any one having authority, which at all affected the title of the railroad company in and to the land in controversy, or which would charge the appellees with any notice or knowledge of any equities which would defeat the title conveyed by the patent to the State of Iowa, for the use and benefit of the Sioux City Company and its assigns forever. In fact, all of the facts, physical and otherwise, would lead a purchaser to believe that the railroad company had ownership of the land in controversy; that it had earned the same; that the United States Government recognized the fact that it had earned the same, and it had conveyed for the use and benefit, and for the benefit of its assigns forever, the legal title to the State of Iowa.

Such was the condition of the title at the time that Congress passed the act for the adjustment of land grants, chapter 376 of the Statutes of the United States, act approved March 3, 1887, instructing the Secretary of the Interior to immediately adjust, in accordance with the decision of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads and theretofore unadjusted.

Section 2 of the act provides (see 24 Stat., 556).

It will be observed that under the provisions of said section it was made the duty of the Secretary of the Interior to ascertain whether lands had theretofore been erroneously certified or patented by the United States, to or for the use or benefit of any railroad company under the grant from the United States to aid in the construction of a railroad, and in the event that such company refused to reconvey on demand, then it was the duty of the Attorney General to commence and prosecute all necessary proceedings to cancel the patent, certification, and other evidence of title theretofore issued for such title, and thus restore the title thereof to the United

States. There is no doubt of the position that by the patent of the United States of the land in controversy to the State of Iowa, for the use and benefit of the railroad company and its assigns forever, that thereby the legal title to said lands was vested in the State for the use and benefit of the railroad company. The title so conveyed was a title which vested in the State not by virtue of the grant of March 12, 1864, but was a title which vested by virtue of the conveyance, to wit, the patent so issued to the State.

Neither the State nor Congress could divest the title so conveyed by mere legislative enactment. The railroad company was entitled to its day in court and to a judicial determination of the right of the company to the land so conveyed.

Acting under the statute, the Secretary of the Interior did demand of the Sioux City Company the reconveyance of the land in controversy, which demand was made after the purchase by the appellees. The railroad company failed to reply within ninety days, and thereupon, in 1889, the Attorney General brought an action in behalf of the United States against the Sioux City Company to cancel the patent so issued to the State for the benefit of said company.

This suit was brought in the United States Circuit Court, Northern District of Iowa, Western Division. The Circuit Court found in favor of the United States, and thereupon the railroad company appealed to the Supreme Court of the United States, and on October 21, 1895, the Supreme Court of the United States filed an opinion confirming the decree of the Circuit Court, which opinion is reported in volume 159, U. S., page 349.

Thereafter, in pursuance of said act approved March 3, 1887, the Land Department proceeded to open the lands for settlement and purchase, giving the proper proclamation notice, and the Land Department invited homestead applicants and purchasers from the railroad company to make proper proof and obtain title to the land.

Section 4 of the act provides as follows (see 24 Stat., 557):

Under the provisions of this act, and in furtherance of the proceedings of the Secretary of the Interior, the Land Department, and the action of the United States in prosecuting the suit to resume title, the appellees made application for patents as good-faith purchasers of the land.

The appellant, not having been in possession of the land at any time previous to his application (his trespass upon the land gaining him nothing), appeared at the land office and made application to homestead the land under the general homestead laws of the United States.

Such proceedings were had in the Land Department that the application of the appellees was sustained (and it should be borne in mind there was no possession or legal claim of possession otherwise than in appellees, antedating their purchase from the Sioux City Company) and patent issued to the appellees, who made payment under the provisions of the act approved March 3, 1887.

The appellant's claim of title rests solely upon the application which he made to homestead under the homestead laws of the United States. This application was rejected; the same has not been retendered, nor the entry fee retendered, nor has he been in possession of the land. His title, therefore, rests entirely upon the statutory right, if any, to comply with the homestead laws, to pay the entry fee and purchase price of the entry, make the necessary improvements, and it may possibly be said of appellant's right to claim title is that it is the merest equity, entitling him to homestead upon payment of the entry, make the necessary improvements, and at the expiration of the homestead period making proof of occupation, improvement, and final payment, and thereupon become entitled to a patent—this upon the theory that there were no superior rights standing in his way:

The appellees purchased the equity of the railroad company. They paid the fair cash, reasonable market value of the land. They have paid the taxes levied and assessed

thereon; they have been in the actual possession of the land since the day of purchase. They have reduced the land to a high state of cultivation as a farm, fenced and inclosed it. The United States received the purchase price and still retains it. Appellees have obtained a patent from the Government which lodges in them the legal and equitable title, and the equity of the appellees has been fortified by and merged in the legal title.

The appellant, therefore, is attacking the legal title and the equitable ownership of the appellees, and as a basis for his claim of right to recover the land and cancel the patent he has not, under all the circumstances as disclosed by the record in this case, even a contingent equity.

We contend, therefore, that under the facts, and in view of the record in this case, and especially in view of the agreed statement of facts upon which this case was submitted, the appellant is not in a position to have the patent canceled, nor to have a trust declared in his favor; that the appellant's claim herein is barren of all equity, and that there is nothing in his prayer to stir the conscience of a court of equity except to move it to dismiss his complaint.

Respectfully submitted,

W. D. BOIES,
WILLIAM MILCHRIST, AND
GEORGE C. SCOTT,
Solicitors for Appellees.

LYLE v. PATTERSON.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
" EIGHTH CIRCUIT.

No. 167. Argued March 5, 1913.—Decided April 7, 1913.

Quare, whether the benefits of the act of March 3, 1887, providing for settlement of titles of purchasers in good faith from railroad companies not entitled to convey, are confined exclusively to those who purchased prior to that date.

One suing to make a patentee trustee for himself can only recover on the strength of his own equity and not on the defects in defendant's title.

A possessory title to lands of the public domain acquired in good faith from a railroad company afterwards held not to have earned the land, by a purchaser who cultivated and improved the property, is good as against all except the United States, and an attempted entry by another before the land is restored to the public domain and reopened for entry is a trespass and initiates no rights in the property.

Possession, not based on a legal right but secured by violence and maintained with force and arms, cannot furnish the basis of a right enforceable in law.

A preëmption right cannot be initiated without settlement, habitation and improvement, *Homer v. Wallace*, 97 U. S. 579, and the same rule

applies to a homestead entry. Neither right can be initiated when the land is in possession of another under color of title.

A naked unlawful trespass cannot initiate a right to any part of the public domain. *Swanson v. Sears*, 224 U. S. 182.

176 Fed. Rep. 909, affirmed.

By the act of May 12, 1864, 13 Stat. 72, c. 84, Congress made a land grant to the State of Iowa to aid in the construction of a railroad from Sioux City to the Minnesota line—a distance of about 80 miles. It was provided that the road should be completed within ten years, but that as each ten miles was completed, a patent for one hundred sections should be issued by the Secretary of the Interior to the State, for the benefit of the company building the road. In 1866 the State passed an act under which the Sioux City and St. Paul Railroad was to receive the benefit of the Congressional land-grant. That company began construction in 1872. Several ten mile sections were completed. Patents were accordingly issued to the State and it, in turn, made a number of grants to the Railroad Company. But, because of a controversy as to what had been earned, the State of Iowa refused to convey to the Railroad Company those sections which contained the land involved in this controversy.

This particular tract was sold on May 12, 1887, by the Railroad Company to Pasco, who bought in good faith, believing that the company had earned the right to receive a title thereto. He paid part of the purchase price, promised to pay the balance in ten annual instalments, entered into possession and made valuable improvements. In 1889 he sold his interest to Patterson, who agreed to pay the balance of the purchase money due to the Railroad. Patterson, by himself and tenants, remained in possession until January, 1901. He then sold to Smith and the latter, in March, 1901, conveyed to Thomas Beacom. In May, 1901, the appellant, Lyle, claiming that he had a homestead right in the premises, brought

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the present suit against Patterson, Smith and Thomas Beacom to charge them as trustees holding title for his use.

On the trial it appeared that in 1874, 56 miles of the railroad had been constructed, after which the company ceased to build. The road not having been fully constructed within ten years as required by Congress in the act of 1864, the State of Iowa refused to issue grants for land claimed by the Railroad Company, and, by appropriate legislation, the State resumed all the unearned land and relinquished the same to the United States. In 1889 the Government filed in the Circuit Court a bill against the Sioux City and St. Paul Railroad Company asking the court to quiet the title of the United States to land therein described, included in which was the quarter-section sold, in 1887, to Pasco. That suit resulted in a decree in favor of the United States. It was affirmed October 21, 1895 (159 U. S. 349).

On October 22, 1895, the day following the decision in favor of the Government and for the purpose of initiating a homestead right, James Beacom entered upon the land and in the afternoon of the same day Lyle did likewise. He hauled a small hut upon the land, did a little plowing, and slept on the place one or two nights. He left, intending to return, but was prevented from doing so by James Beacom, who, with a drawn pistol and threats of violence, kept him from coming on the land. Subsequently, Lyle did reënter and remained until he was again forced to leave.

On November 18, 1895, shortly after the decision that the land did not belong to the railroad, but to the United States, notice was given by the Department of the Interior that all the land included in the decree would be restored to the public domain and be subject to entry ninety days after publication. Those having rights under the act of 1887, 24 Stat. 556, c. 376, were required to file their claims

within ninety days following. In February and again in March, 1896, Lyle made his homestead application, tendering the necessary fees. Similar applications were made by James Beacom, Hoffman and others. Patterson made his claim under the act of 1887. It was rejected on the ground that after the passage of that act, and with notice of the defective title, he had made a new contract with the Railroad Company as to what should be paid him in the event the Government succeeded in the suit. Hoffman was held to be entitled to the patent. On appeal that decision was reversed by the Commissioner of the Land Office, who ruled in favor of James Beacom. On a further appeal the Secretary of the Interior held that nothing had been done under the new contract to deprive Patterson of the priority given to good faith purchasers under the act of March 3, 1887, and a patent was accordingly issued to him on March 23, 1901. Thereupon Lyle, on May 24, 1901, brought this bill against Patterson, Smith and Thomas Beacom to cancel the patent, or to have the holders of the legal title decreed to hold the land in trust for him. The Circuit Court dismissed the bill, and the decree was affirmed (176 Fed. Rep. 909) by the Circuit Court of Appeals.

Mr. Madison B. Davis and Mr. Alfred Pizey for appellant submitted.

Mr. George C. Scott, with whom *Mr. W. D. Boies* and *Mr. William Milchrist* were on the brief, for appellees.

MR. JUSTICE LAMAR, after making the foregoing statement, delivered the opinion of the court.

The Sioux City and St. Paul Railroad, claiming to have earned the land under the act of May 12, 1864, 13 Stat. 72, c. 84, sold a quarter-section in 1887, to Pasco, who

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bought in good faith believing that the company was entitled to a grant from the State. He conveyed his interest to Patterson, who pending the litigation between the United States and the Railroad Company, in reference to the land, made a contract as to the amount to be paid him in the event the company lost the suit. The Government prevailed and the land being specially valuable because of its having been cultivated and improved there was a race to acquire the preëmption right. Lyle and others, claiming to have entered into possession, made applications for a homestead. Patterson, relying on the rights of a good-faith purchaser under the act of March 3, 1887, filed his claim. After a lengthy contest in the Land Department he received a patent. Lyle insists that the action of the Secretary of the Interior was based upon a misconstruction of the law and that Patterson and his assignee should be decreed to hold the title in trust for Lyle as the first entryman.

In the lengthy briefs filed in this court various arguments are presented to show that the benefit of the act of March 3, 1887, 24 Stat. 556, was confined to those who bought before that date, and that Patterson's subsequent contract with the Railroad Company deprived him of the priority he otherwise might have had. It is not necessary to consider these contentions, for even if they were sound it could not avail Lyle in the present suit, since he can only recover on the strength of his equity and not on the defects in defendant's title.

When on October 22, 1895, he made the so-called entry and settlement, the quarter-section was not an open and unoccupied part of the public domain, but in the possession of Thomas Beacom, who had bought from those who, having acquired the property in good faith, cultivated the land and made valuable and permanent improvements thereon. This prior possessory title was good as against all except the United States, and Lyle's entry was

a trespass which neither gave nor initiated any right in the property. The fact that by the threats and violence of another trespasser, he was prevented from continuing his forcible entry and detainer, deprived him of no right in the land, though it does illustrate what would be the result if possession secured by violence and maintained with force and arms could furnish the basis of a right enforceable in law.

Such a claim, originating in trespass, cannot be recognized, for "to create a right of preëmption there must be settlement, inhabitation and improvement by the preëmtor, conditions which cannot be met when land is in the possession of another." *Hosmer v. Wallace*, 97 U. S. 575, 579. This is equally true of the initiation of a homestead right by settlement. The land here had been cultivated and improved by those who were in possession under a purchase from the Railroad, the apparent owner of the equitable title. Lyle's entry, though made under a pretense of effecting a homestead settlement, was but a naked unlawful trespass which could not initiate a right. *Atherton v. Fowler*, 96 U. S. 513, 516; *Swanson v. Sears*, 224 U. S. 180, 182. He therefore had no standing in court, and the bill was properly dismissed.

Decree affirmed.